

1 **AGREEMENT FOR PROFESSIONAL SERVICES**

2 **BETWEEN**

3 **THE CITY OF NEW ORLEANS**

4 **AND**

5 **HERMAN, HERMAN, KATZ & COTLAR, L.L.P.**

6 THIS AGREEMENT made this 1st day of January, 2010 (the effective date), by and between the
7 City of New Orleans, herein represented by Arnie Fielkow, Council President (hereinafter
8 referred to as "the City"), and HERMAN, HERMAN, KATZ & COTLAR, L.L.P. represented by
9 Steven J. Lane, Managing Partner (hereinafter referred to as "Contractor").

10
11 **W I T N E S S E T H**

12
13 **WHEREAS**, following completion of a Request for Qualifications process conducted in
14 compliance with Council Rule 45, by Motion M-08-186, adopted by the Council on April 17,
15 2008, the Council authorized and requested the Council President to sign a professional services
16 contract to retain Herman, Herman, Katz & Cotlar, as special counsel to the City Council; and

17 **WHEREAS**, Herman, Herman, Katz and Cotlar, whose Taxpayer I.D. Number is 72-
18 096-5501, possesses the required skills and experience and has provided, since July 1, 2008, and
19 is willing to provide, for an additional one year term, special counsel services to the City
20 Council; and

21 **WHEREAS**, the Council wishes to continue this arrangement and to that end has
22 adopted motion M-09-680, authorizing the Council President to renew/extend the professional
23 services contract with Herman, Herman, Katz & Cotlar, as special counsel to the Council for a

1 one year term beginning January 1, 2010 and ending December 31, 2010; and

2 **WHEREAS**, the renewal/extension of this contract for 2010 will facilitate the continuity
3 of services described in the contract; now, therefore

4 **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 and the
8 City Council and/or b) the Council's best interest will be served through the Council's receipt of
9 advice and guidance of special counsel, contractor agrees to assist the Council with legal and
10 policy matters where advice independent of the Department of Law is desired related to the
11 legislative powers, regulatory powers and/or other functions of the City Council and which are
12 not in conflict with and do not usurp the powers and functions that are provided exclusively to
13 the City Attorney or Law Department under the City Charter.

14 **B.** At the direction and under the supervision of the Council's Chief of Staff, the contractor will
15 provide services to the Council as a whole and its Committees. Services of special counsel shall
16 be provided pursuant to the following process: a) by Council motion; or b) upon the request of
17 one or more Councilmembers with the approval of the Council President, or if the Council
18 President makes the request, with the approval of the Council Vice-President, subject, however,
19 to disapproval by a majority of all members of the Council at its next regular or special meeting.

20 The Council Chief of Staff (COS) shall serve as contract manager for the special counsel; and
21 accordingly (i) after compliance with the procedural process indicated hereinabove, special
22 counsel may receive specific work assignments through the COS; (ii) the special counsel shall
23 give the COS immediate notice of work authorized herein and COS shall, in turn, immediately

1 notify all Councilmembers of same; and (iii) the COS shall review all bills submitted to ensure
2 that all services reflected in the bills or invoices are authorized as provided herein or otherwise
3 authorized by the Council.

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

- 6 • Review of ordinances, motions, resolutions, and related documents prior to and
7 subsequent to introduction, and provide analysis as requested
- 8 • Attendance at Council or committee meetings or other meetings as requested
- 9 • Review of contract documents
- 10 • Review of state and federal legislation or administrative rules
- 11 • Review of City Attorney opinions, Attorney General opinions, and court or
12 administrative decisions or orders
- 13 • Attendance at executive sessions
- 14 • Review and analysis of litigation
- 15 • Performance of such other legal services and provision of policy advice related to the
16 legislative powers and functions of the City Council pursuant to the Home Rule Charter
17 that are not in conflict with and do not usurp the powers and functions of the City
18 Attorney or Law Department under the Charter.
- 19 • **Section 2.** The City shall perform each of the following services:
 - 20 1. Provide administration of the Agreement through the City Council Chief of Staff
21 (COS); and
 - 22 2. Provide access to all personnel and records deemed necessary for the performance of
23 the Services by Contractor.

1 **ARTICLE II. REPRESENTATIONS AND WARRANTIES**

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

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

6 Section 2. Representations and Warranties of Contractor. Contractor represents and warrants
7 that:

- 8 A. Contractor has not employed or retained any entity or person, other than a bona fide
- 9 employee working solely for Contractor, to solicit or secure this Agreement nor has
- 10 Contractor paid or agreed to pay any entity or person, other than a bona fide employee,
- 11 any gift, commission, percentage, brokerage or any other such fee for the purpose of
- 12 assisting Contractor in securing this Agreement. Contractor acknowledges its
- 13 understanding that any gifts made or fees paid in contravention of this representation and
- 14 warranty shall be considered bribery pursuant to City Code Section 70-509 and shall
- 15 subject the offender to criminal penalties in addition to suspension from participation in
- 16 City contracting for a period of not less than three years. The execution of this
- 17 Agreement by Contractor’s duly authorized representative shall be deemed a sworn
- 18 statement by Contractor of its compliance with this representation and warranty, as
- 19 required by City Code Section 46-51;
- 20 B. Contractor, through its duly authorized representative, has the full power and authority to
- 21 enter into and execute this Agreement and, as such, this Agreement is legally binding
- 22 upon and enforceable against Contractor in accordance with its terms;

- 1 C. Contractor is not under any obligation to any other party that would be inconsistent with or
2 in conflict with this Agreement or that would prevent, limit or impair in any way its
3 performance of any obligations hereunder;
- 4 D. Contractor has the requisite expertise, qualifications, staff, materials and equipment in
5 place and available to enable it to fully perform the Services and Contractor, along with
6 its employees, as required, and all sub-contractors, if any and as required, possess all
7 necessary permits, licenses, consents, registrations and/or certifications required under
8 federal, state and/or local law to perform the Services;
- 9 E. As of the Effective Date of this Agreement, Contractor has no knowledge of any
10 undisclosed fact that could materially adversely affect its condition (financial or
11 otherwise), business operations or its ability to fulfill its obligations under this
12 Agreement;
- 13 F. Contractor is not in breach of any federal, state or local statute or regulation applicable to
14 Contractor or its operations;
- 15 G. Contractor's work shall be accurate and free from any material errors. Contractor's
16 duties as set forth in this Agreement shall at no time be in any way diminished by reason
17 of any approval by City nor shall Contractor be released from liability by reason of such
18 approval by City—it being understood that City, at all times, is ultimately relying upon
19 Contractor's skill and knowledge in performing the Services;
- 20 H. Contractor is bonded, if required by law, and fully and adequately insured for the injury of
21 its employees and any others incurring loss or injury as a result of the actions of Contractor
22 or its employees or subcontractors in the performance of its obligations under this
23 Agreement; and

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

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

6 **ARTICLE III. COMPENSATION**

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

9 Partners: \$250 per hour

10 Associates: \$200 per hour

11 Paralegals: \$55 to \$65 per hour.

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

14 Section 2. Truth-In-Negotiation. As of the Effective Date of this Agreement, Contractor
15 represents and warrants that the rates charged City as set forth in this Article III for the
16 performance of the Services are no higher than those charged Contractor's most favored
17 customer for the same or substantially similar services. In the event Contractor's "most favored
18 customer" rates are reduced during the term of this Agreement, Contractor shall be obligated to
19 promptly notify City of such reduction in writing, and such reduced rates shall apply to any services
20 provided on or after the date that Contractor first reduced such rates. City shall have the right to
21 enforce this provision for up to one (1) year following the termination of this Agreement.

22 Section 3. Detailed Monthly Invoices. As a prerequisite to payment, Contractor shall submit to
23 City monthly invoices describing in detail, at a minimum, the services performed and time

1 expended in the performance of such services. Billing hours shall be invoiced in increments of
2 not greater than one-tenth of an hour.

3 Section 4. Maximum Compensation; Subject to Appropriation. City's obligation to compensate
4 Contractor hereunder shall not at any time exceed the maximum compensation, in the aggregate,
5 of \$125,000.00. Further, all compensation owed Contractor pursuant to this Agreement is
6 contingent upon the appropriation and allocation of funds by City.

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

14 Section 6. No Payments in Excess of Maximum Compensation. Officers and employees of City
15 are not authorized to offer or promise to Contractor additional funding for the contract in excess
16 of the maximum amount of funding set forth above. Additional funding for services provided
17 under this Agreement, unless this Agreement has been amended in accordance with its terms to
18 authorize such increase and the Department of Finance has certified the availability of such
19 additional funding. Absent the prior duly authorized amendment of this Agreement and the
20 necessary certification of the Department of Finance, City shall not be required to honor—and
21 will not remit to Contractor—any offered or promised additional funding for any of the Services
22 performed pursuant to this Agreement in excess of the maximum amount set forth above.

23

ARTICLE IV. TERM

1 Section 1. Term. This Agreement shall commence on the Effective Date and shall continue until
2 December 31, 2010. It is understood and acknowledged by Contractor that the Services
3 described above are expected to be completed within this time period.

4 Section 2. Renewal. At the option of City, this Agreement may be renewed on an annual basis
5 for no longer than three one-year periods, beginning January 1, 2011, provided that (A)
6 additional funding, if required, is allocated by City and incorporated herein by a duly authorized
7 amendment to this Agreement and (B) the renewal of this Agreement will facilitate the
8 continuity of the services described herein.

9 **ARTICLE IV. NON-DISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY**

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

21 Section 2. Equal Employment Opportunity. Contractor further agrees not to discriminate on the
22 basis, whether in fact or perception, of a person's race, color, creed, religion, national origin,
23 ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status,

1 physical or mental disability or AIDS- or HIV-status against any applicant for employment with
2 Contractor. Further, Contractor agrees to take affirmative action to ensure that that the
3 applicants are considered for employment and that employees are treated during employment
4 without unlawful regard to such person's race, color, creed, religion, national origin, ancestry,
5 age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or
6 mental disability or AIDS- or HIV-status. Such action shall include, without limitation, the
7 following areas: employment, promotion, demotion, transfer or layoff; recruitment or
8 recruitment compensation; and selection for training. Contractor agrees to post in conspicuous
9 places, available to employees and applicants for employment, notices setting forth the
10 provisions of this non-discrimination clause. Further, Contractor agrees all solicitations or
11 advertisements for employees placed by or on behalf of Contractor shall state that all qualified
12 applicants will receive consideration for employment without regard to race, creed, color, sex or
13 national origin.

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

21 **ARTICLE V. INDEMNIFICATION**

22 Section 1. Duty to Indemnify City Against Loss. To the fullest extent permitted by law,
23 Contractor shall protect, defend, indemnify and hold harmless City, its agents, elected officials

1 and employees (collectively, the “Indemnified Parties”) from and against all claims, actions,
2 liabilities, losses (including, without limitation, economic losses) and costs, arising out of or
3 related to (a) any actual or alleged act or omission in the performance of the Services by
4 Contractor or any subcontractor or (b) any act outside the scope of the Services by Contractor or
5 any subcontractor. By way of illustration—not limitation, Contractor’s obligation to indemnify
6 City shall extend to the following, provided that such claims arise out of or relate to the
7 performance of the Services by Contractor: (i) personal injury claims, (ii) property damage or
8 loss claims, (iii) fines or sanctions resulting from violations of any law, statute, ordinance, rule,
9 regulation or intellectual property rights by Contractor, and (iv) liens, claims or actions made by
10 Contractor, any subcontractor or any employees thereof under workers compensation acts,
11 disability benefits acts, other employee benefit acts or any **statutory bar**.

12 Section 2. Limit on Duty to Indemnify. Notwithstanding anything to the contrary herein,
13 Contractor shall not be required to indemnify the Indemnified Parties for any loss that results
14 from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that
15 Contractor or any subcontractor did not contribute to such gross negligence or willful
16 misconduct. . Contractor shall also not be required to indemnify any party to this agreement if
17 the City Council or any agency or subdivision thereof disregards the advice of Contractor.

18 Section 3. Independent Duty to Defend. Contractor specifically acknowledges and agrees that it
19 has an immediate and independent obligation to, at City’s option, (a) defend City from or (b)
20 reimburse City for its costs incurred in the defense of: any claim that actually or potentially falls
21 within this Article V, even if the allegations are or may be groundless, false or fraudulent. This
22 obligation shall remain in full force and effect even if Contractor is ultimately absolved from
23 liability.

1 Section 4. Expenses. All expenses, including, without limitation, reasonable attorney fees,
2 incurred by City in enforcing this Agreement shall be borne by Contractor.

3 **ARTICLE VI. INDEPENDENT CONTRACTOR STATUS**

4 Section 1. Independent Contractor Status. Contractor shall not be deemed an employee, servant,
5 agent, partner or joint venturer of City. Rather, Contractor herein expressly acknowledges and
6 agrees that it is providing services exclusively as an independent contractor to City, as such term
7 is defined in La. Rev. Stat. 23:1021(6). As such, Contractor agrees that it shall not hold itself or
8 any of its employees, subcontractors or agents to be an employee, partner or agent of City. Further,
9 Contractor acknowledges and agrees that, as an independent contractor, neither Contractor nor
10 any of its employees shall be entitled to receive any benefits that employees of City are entitled
11 to receive, including, without limitation, workers' compensation coverage, unemployment
12 compensation coverage, medical insurance, life insurance, paid vacations, paid holidays, sick
13 leave, pension, or Social Security for any services rendered to City under this Agreement.

14 Section 2. No Withholding; Form 1099 Reporting. Contractor understands and agrees that (a) City
15 will not withhold on behalf of Contractor any sums for any federal, state or local income tax,
16 unemployment insurance, social security, or any other withholding pursuant to any law or
17 requirement of any governmental body, and that City will not make available to Contractor any of
18 the benefits afforded to employees of City; (b) all of such withholdings and benefits, if applicable,
19 are the sole responsibility of Contractor; and (c) Contractor will indemnify and hold City harmless
20 from any and all loss or liability arising with respect to any such withholdings and benefits. The
21 parties agree that if the Internal Revenue Service questions or challenges Contractor's independent
22 contractor status, both Contractor and City shall have the right to participate in any discussion or
23 negotiation with the Internal Revenue Service. Contractor acknowledges that all compensation paid

1 to Contractor pursuant to this Agreement will be reported annually by City to the Internal Revenue
2 Service on Form 1099.

3 Section 3. No Control of Method of Performing Services. City is interested only in the results
4 obtained under this Agreement. With regard to Contractor's performance of the Services, nothing
5 herein shall be construed as giving City control over (a) the manner or method of Contractor's
6 performance or (b) the professional judgment of Contractor with respect to such performance. City
7 waives any rights to direct, instruct or control Contractor as to the manner in which Contractor
8 achieves the general and specific objectives, except that Contractor agrees to perform the Services
9 in a manner designed to minimize delay, duplication of efforts, redundancy and expenses, including,
10 without limitation, Contractor's compensation. In sum, Contractor agrees and shall be obligated to
11 perform the Services in the most expeditious and economical **manner consistent** with the interests of
12 City.

13 **ARTICLE VII. GOVERNING LAW, JURISDICTION AND VENUE**

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

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

21 **ARTICLE VIII. RETENTION, ACCESS AND OWNERSHIP OF RECORDS**

22 Section 1. Retention. Contractor agrees to keep all such business records related to or arising
23 out of this Agreement as would be kept by a reasonably prudent practitioner of Contractor's

1 profession for a period of six (6) years after the termination of this Agreement. All accounting
2 records shall be maintained in accordance with generally accepted principles and practices.

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

10 Section 3. Ownership. All data collected and all products of work prepared, created or modified
11 by Contractor in the performance of its obligations under this Agreement, including, without
12 limitation, any and all notes, tables, graphs, reports, files, computer programs, source code,
13 documents, records, disks, original drawings or other such material, regardless of form and
14 whether finished or unfinished, (collectively, "Work Product") shall become the exclusive
15 property of City, and no reproduction of any portions of such Work Product may be made in any
16 form without the express written consent of City. City shall have all right, title and interest in
17 such Work Product, including, without limitation, the right to secure and maintain the copyright,
18 trademark and/or patent of Work Product in the name of City. All such Work Product may be
19 used and distributed for any purpose deemed appropriate by City without the consent of and for
20 no additional consideration owing to Contractor.

21 **ARTICLE IX. TERMINATION**

22 Section 1. Termination for Cause. City and Contractor shall each have the right to terminate this
23 Agreement for cause, effective immediately upon the giving of written notice to the other party

1 of its intent to terminate and the reasons therefor. If the termination for cause is subsequently
2 challenged in a court of law and if the challenging party prevails, the termination for cause shall
3 be deemed to be a termination for convenience and shall be effective thirty (30) days from the
4 date that the original written notice of termination for cause was given to the challenging party
5 and no further notice shall be required.

6 Section 2. Termination for Convenience. City and Contractor shall each have the right to
7 terminate this Agreement without cause by giving the other party written notice of its intent to
8 terminate at least thirty (30) days prior to the date of termination. In the event City elects to
9 terminate for convenience, City shall be obligated to pay Contractor only for those Services
10 performed up to and through the date of termination.

11 Section 3. Survival of Certain Provisions. All representations and warranties and all
12 responsibilities regarding record retention, access and ownership, cooperation with City
13 Inspector General investigations, indemnification and payment for services rendered shall
14 survive the termination of this Agreement and continue in full force and effect.

15 **ARTICLE X. INSURANCE**

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

20 **ARTICLE XI. NOTICE**

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

23 If to City: Evelyn F. Pugh, Interim City Council Chief of Staff

1 New Orleans City Council, Room 1E06

2 City Hall, 1300 Perdido St.

3 New Orleans, Louisiana 70112

4 and Penya M. Moses-Fields

5 City Attorney

6 City of New Orleans

7 1300 Perdido St., Room 5E03

8 New Orleans, LA 70112

9 **If to Contractor:**

10 Steven J. Lane

11 **Managing Partner**

12 **HERMAN, HERMAN, KATZ & COTLAR, L.L.P.**

13 **820 O'Keefe Ave.**

14 **New Orleans, LA 70113-1116**

15 Section 2. Notices shall be effective when received by each of the above-referenced individuals
16 at the addresses specified above. Each party shall be responsible for notifying the other in
17 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 transmission of
19 routine communications between representatives of City and Contractor.

20 **ARTICLE XII**

21 **GENERAL PROVISIONS**

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

1 obtaining the written consent of the other party. Subcontractors must be approved by Motion of the
2 City Council.

3 Section 2. Conflict of Interest.

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

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

- 20 • The Council Chief of Staff shall immediately notify (either electronically or in writing)
21 each Councilmember of any notice received pursuant to this section or in the event
22 knowledge of a potential conflict of interest is acquired independently.
- 23 • If any Councilmember objects to the Contractor's proposed undertaking, he or she must

1 notify the Chief of Staff (either electronically or in writing) within seven working days of
2 the receipt of notice from the Chief of Staff of such objection. The Chief of Staff shall
3 prepare a motion for the Councilmember(s) objecting calling for the approval or
4 disapproval of the proposed undertaking by a majority of all members of the Council at
5 the next regular or special meeting of the Council.

6 Section 3. Audit and Other Oversight: The Contractor understands and will abide by all
7 provisions of the Code of the City of New Orleans, Chapter 2, Art. XIII, Sect. 2-1120, as adopted
8 by City Ordinance No. 22,888 M.C.S., (relative to the operations and authority of the City
9 Inspector General), incorporated herein by reference.

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

16 Section 5. Severability. The parties hereto intend all provisions of this Agreement to be
17 enforced to the fullest extent permitted by law. Accordingly, should a court of competent
18 jurisdiction find any provision to be unenforceable as written, the parties intend and desire that
19 the court should reform the provision so that it is enforceable to the maximum extent permitted
20 by law. If, however, the court should find such provision to be illegal and not subject to
21 reformation, such provision shall be fully severable. In such event, this Agreement shall be
22 construed and enforced as if such illegal, invalid or unenforceable provision was never a part
23 hereof, and the remaining provisions of this Agreement shall remain in full force and effect.

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

- 3 Exhibit A Corporate Resolution—Authorization to Sign;
- 4 Exhibit B Credentials—Resumés, Licenses or Certifications; and
- 5 Exhibit C IRS Form W-9.

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

15 Section 8. Amendment. No amendment of or modification to this Agreement shall be valid
16 unless and until executed in writing by the duly authorized representatives of both parties to this
17 Agreement.

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

21 Section 10. Time is of the Essence. City and Contractor each acknowledge and agree that time
22 is of the essence in the performance of this Agreement.

23 Section 11. Non-Exclusive. This Agreement shall be non-exclusive. Accordingly, Contractor

1 shall be free to provide services to other clients, and City shall be free to engage the services of
2 other contractors for the provision of some or all of the Services set forth in this Agreement.

3 Section 12. 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 elected
6 official or employee of City shall be deemed to be a financial interest of such elected official or
7 employee of City. Any willful violation of this provision, with the expressed or implied
8 knowledge of Contractor, shall render this Agreement voidable by City and shall entitle City to
9 recover, in addition to any other rights and remedies available to City, all monies paid by City to
10 Contractor pursuant to this Agreement without regard to Contractor's satisfactory performance
11 of such Services.

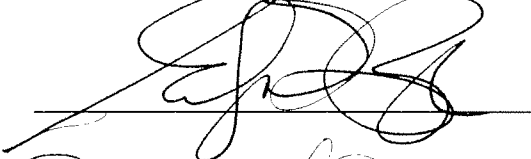
12 Section 13. Remedies Cumulative. No remedy set forth in this Agreement or otherwise
13 conferred upon or reserved to any party shall be considered exclusive of any other remedy
14 available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and
15 each may be exercised from time to time as often as the occasion may arise or as may be deemed
16 expedient.

17 Section 14. Complete Agreement. Contractor, Herman, Herman, Katz & Cotlar, LLP,

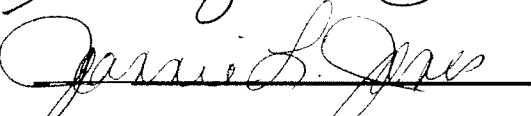
1 specifically acknowledges that in entering into and accepting this Agreement (comprised of 20
2 pages), Contractor relies solely upon the representations and agreements contained in this
3 Agreement and no others. This Agreement supersedes and replaces any and all prior agreements,
4 negotiations and discussions between the parties hereto with regard to the terms, obligations and
5 conditions herein.

6 IN WITNESS WHEREOF:

CITY OF NEW ORLEANS


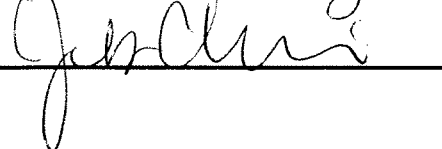
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BY: ARNIE FIELKOW
COUNCIL PRESIDENT

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14 IN WITNESS WHEREOF:

HERMAN, HERMAN, KATZ & COTLAR, L.L.P.

15
16 
17
18 


Steven J. Lane, Managing Partner
820 O'Keefe Avenue
New Orleans, LA 70113-1116
Taxpayer Identification Number: 72-096-5501

23
24 APPROVED: 
25
26 LAW DEPARTMENT

K10-111

MOTION

M-09-680

CITY HALL: December 7, 2009

BY: COUNCILMEMBERS FIELKOW, CLARKSON, MIDURA, HEAD,
CARTER, HEDGE MORRELL AND WILLARD-LEWIS

WHEREAS, by Motion M-08-186, after competitive selection, the City Council authorized retention of Herman, Herman, Katz & Cotlar as Special Counsel to the City Council; and

WHEREAS, pursuant to Motion M-07-586, terms of the Request for Proposals issued April 17, 2008, and the July 21, 2008 contract with Herman, Herman, Katz & Cotlar, the Council is authorized to renew and extend its existing contract with Herman, Herman, Katz & Cotlar to provide Special Counsel services to the City Council; now, therefore

BE IT MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the President of the Council is hereby requested and authorized to sign a contract amendment with Herman, Herman, Katz & Cotlar extending and renewing the July 21, 2008 contract, as amended by the agreements dated January 1, 2009 and November 5, 2009, through 2010 and setting the maximum compensation under such contract to up to One Hundred Twenty-Five Thousand Dollars (\$125,000.00).

BE IT FURTHER MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That contract amendment (s) shall be circulated in accordance with normal process and the City Council Rules.

THE FOREGOING MOTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS: Clarkson, Head, Hedge-Morrell, Midura, Willard-Lewis - 5

NAYS: 0

ABSENT: Carter (Temporarily Out of Chamber) - 1

RECUSED: Fielkow - 1

AND THE MOTION WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE TRUE AND CORRECT COPY


CLERK OF COUNCIL