

1 **AGREEMENT FOR PROFESSIONAL SERVICES**

2 **BETWEEN**

3 **THE CITY OF NEW ORLEANS**

4 **AND**

5 **HAMILTON & BROWN, LLC**

6 THIS AGREEMENT is made and entered into as of the 21st day of May 2012, by and
7 between the Council of the City of New Orleans, represented by Jacquelyn Brechtel Clarkson,
8 President of the Council (hereinafter referred to as "City") acting on behalf of the City Council
9 and Hamilton & Brown, LLC (hereinafter sometimes referred to as "Contractor").

10 **WITNESSETH**

11 **WHEREAS**, the Council was recently named as a defendant in litigation entitled *The*
12 *Administrators of the Tulane Educational Fund vs. The City of New Orleans and the New*
13 *Orleans City Council*; and

14 **WHEREAS**, the Council understands that there is a conflict or potential conflict between
15 the Council and the executive branch; and

16 **WHEREAS**, the Council understands that there is a conflict or potential conflict that
17 prevents our contracted special counsel from representation of the Council; and

18 **WHEREAS**, the need for representation of the Council in this matter can be addressed
19 with a contract in an amount below the competitive selection threshold established by the City
20 Code and Council Rule 45; and

21 **NOW, THEREFORE**, the City and Hamilton & Brown, LLC for the consideration, and
22 under conditions set forth, do agree as follows:

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I. SCOPE OF SERVICES

Contractor Agrees To:

Provide representation to the Council in the matter of *The Administrators of the Tulane Educational Fund vs. The City of New Orleans and the New Orleans City Council*, CDC #12-4882, as directed by the Council Chief of Staff and the President of the Council

II. COMPENSATION

The City agrees to pay the Contractor a sum not to exceed Fifteen Thousand Dollars (\$15,000.00) for all services required herein, which shall include reimbursement for expenses incurred. The billing rate for professional services shall be \$250.00 per hour. If there any necessary and ordinary expenses attached to the work of Hamilton & Brown, these expenses, in addition to the fees shall not exceed Fifteen Thousand Dollars (\$15,000.00). Hamilton & Brown shall submit to the City a detailed monthly invoice for payment of services provided. This agreement is contingent upon the appropriation and allocation of funds by the City of New Orleans.

III. PAYMENT

Payment under this agreement shall be made pursuant to detailed monthly invoices submitted by the firm, subject to review and approval by the City for payment.

IV. EQUAL EMPLOYMENT OPPORTUNITY:

In all hiring or employment made possible by or resulting from this Contract, there (1) will not be any discrimination 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, affirmative action will be

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

11 **V. ASSIGNABILITY:**

12 The Contractor shall not assign any interest in this Contract, and shall not transfer any
13 interest in the same without prior written consent of the City of New Orleans.

14 **VI. CONFLICT OF INTEREST:**

15 In the interest of ensuring that efforts of the Contractor do not conflict with the interest of
16 the City, and in recognition of Contractor's professional responsibility to the City, the
17 Contractor agrees to decline any offer of employment if its independent, professional
18 work on behalf of the City is likely to be adversely affected by the acceptance of such
19 employment. The initial determination of such a possibility rests with the Contractor. It
20 is incumbent upon the Contractor to notify the City and provide full disclosure of the
21 possible effects of such employment on the Contractor's independent, professional work
22 in behalf of the City. Final decision on any disputed offers of other employment for the
23 Contractor shall rest with the City.

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VII. INDEMNIFICATION:

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

VIII. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION

COVERAGE:

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

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

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

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

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

X. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS:

It is expressly agreed to and understood between the parties entering into this professional services contract that the Contractor, acting as an independent agent, and its agents assigned and employees shall not receive any sick and annual leave benefits from the City of New Orleans.

XI. JURISDICTION:

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

4 **XII. DURATION OF AGREEMENT:**

5 The services to be provided under the terms of this Agreement shall begin on
6 May 21, 2012 and shall end no later than December 31, 2012. It is understood and
7 acknowledged by all signators to this agreement that work described under these terms is
8 to be accomplished during the time period specified herein. The terms, conditions and/or
9 duration of this contract may be modified by an executed, written amendment to this
10 contract.

11 **XIII. CANCELLATION:**

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

15 **XIV. SOLICITATION:**

16 The Contractor has not employed or retained any company or person, other than a bona
17 fide employee working solely for him, to solicit or secure the subject contract. The
18 Contractor has not paid or agreed to pay any person, other than a bona fide employee
19 working from him, any fee, commission, percentage, gift, or any other or consideration
20 contingent upon or resulting from the subject contract.

21 **XV. OFFICE OF INSPECTOR GENERAL**

22 The Contractor understands and will abide by all provisions of the Code of the City of
23 New Orleans, Chapter 2, Art. XIII, Sect. 2-1120, as adopted by City Ordinance No.

1 22,888 M.C.S., (relative to the operations and authority of the City Inspector General),
2 incorporated herein by reference.

3 **XVI. SUBCONTRACTS:**

4 Any and all subcontracts by the Contractor relating to work under this contract shall be approved
5 in advance by motion of the Council. The Council may require information on ownership
6 interests in the subcontractor prior to approval of the subcontractor's retention. Contractor shall
7 incorporate by reference in all subcontracts the provisions of this Article and shall require all
8 subcontractors to comply with such provisions. Contractor's failure to comply with the
9 obligations in this subsection shall constitute a material breach of this Agreement.

10 **XVII. CONVICTED FELON:**

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

15 **XVIII. EXPENSES**

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

21 **XIX. LIMITATIONS**

22 For the attendance at all meetings of the Council, briefings of Councilmembers, and
23 representation before any court, the Council will only provide labor fee reimbursement
24 for one attorney, unless otherwise specifically approved by the Contracting Officer of the
25 City Council. Contractor further agrees to avoid the unnecessary duplication of

1 personnel and costs in the performance of services under this agreement and accordingly,
2 shall staff all assignments with only qualified and experienced personnel so as to only
3 charge for the minimum number of personnel and incur the least costs reasonably
4 necessary to perform the assignments.

5 **XX. SEVERABILITY:**

6 In the event a Court of competent jurisdiction finds any clause or provisions pertaining to
7 the retention of Contractor invalid, unless said Court expressly states otherwise, said
8 findings shall not affect Contractor's right to continue providing utility-related legal
9 services to the City with respect to any clause or provision not found to be invalid.

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

12 **IN WITNESS WHEREOF:**

13 ATTEST

CITY OF NEW ORLEANS

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Jacquelyn Brechtel Clarkson 6/29/12
Jacquelyn Brechtel Clarkson, President
City Council

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19 *Carey T. Alsobrook*

Galen S. Brown
Galen S. Brown
Hamilton & Brown, LLC
601 Poydras Street, Suite 2750
New Orleans, La. 70130
Federal ID Number 20-3932578

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26 Approved: _____

[Signature]
Law Department