

K17-695

AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

BRUNO AND TERVALON, LLP

THIS FIRST AMENDMENT (the "Amendment") is entered into by and between the City of New Orleans, through the Council of the City of New Orleans (the "Council"), represented by Jason Williams, Council President (the "City"), and Bruno and Tervalon, LLP, represented by Alcide J. Tervalon, Jr., Managing Partner (the "Advisor"). The City and the Advisor may sometimes be collectively referred to as the "Parties." This Amendment is made effective as of January 1, 2017 (the "Effective Date").

RECITALS

WHEREAS, on January 1, 2016 the City and the Advisor entered into a professional services agreement under which the Advisor agreed to provide services as special counsel in relation with electric and/or natural gas regulatory matters (the "Agreement");

WHEREAS, on March 9, 2017, the Council adopted Motion M-17-129 to renew the Agreement for continuity of services;

WHEREAS, on May 4, 2017, the Council adopted Motion M-17-245 to incorporate certain billing guidelines into contracts between the Council and its Utility, Cable, Telecommunications and Technology Committee advisors; and

WHEREAS, the City and the Advisor, each having the authority to do so, now desire to enter this Amendment to extend the term of the Agreement and to increase the compensation for the purpose of continuity of services.

NOW THEREFORE, for good and valuable consideration, the Parties amend the Agreement as follow:

1. Extension. In accordance with Article V. B. of the Agreement, the term is extended for 1 year from the Effective Date through December 31, 2017.

2. Compensation. The maximum aggregate compensation payable described in Article IV of the Agreement is increased by \$220,000.00 to a new total amount not-to-exceed \$440,000.00.

3. Billing Guidelines. The Contractor agrees to comply with the billing guidelines attached to this Amendment under Exhibit A. Exhibit A is now incorporated into the Agreement.

4. Convicted Felon Statement. The Advisor swears that it complies with City Code § 2-8(c). No principal, member, or officer of the Advisor has, within the preceding five (5) 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.

5. Non-Solicitation Statement. The Advisor swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Advisor 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 Amendment.

6. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

7. **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Amendment.

IN WITNESS WHEREOF, the Parties, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY:  _____
Jason Williams, Council President

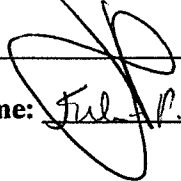
Executed on the 13th of June, 2017.

BRUNO AND TERVALON, LLP

BY:  _____
Alcide J. Tervalon, Jr., Managing Partner

72-0877929
FEDERAL TAX I.D.

APPROVED:
Law Department

By:  _____

Printed Name: Paul A. Boy

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[EXHIBIT A CONTAINED ON NEXT PAGES]

EXHIBIT A TO THE AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN

THE CITY OF NEW ORLEANS

AND

BRUNO AND TERVALON, LLP

**City Council Utility Regulatory Office (CURO) Work and Billing
Practices Policy for Utility, Cable, Telecommunications and Technology
Committee (UCTTC) Advisors**

Note: The following applies to a UCTTC Advisor, or multiple Advisors, or Advisor firms, hereafter referred to as "Advisor" or "Advisors." In this policy, the terms "Invoice" and "Bill" or "Billing" are used interchangeably. "CURO" refers to the CURO Chief and the Deputy Chief/Director, or if one is unavailable then the other, together with any person serving in an interim role in one of those positions.

Purpose:

- 1) To ensure that services are reasonably billed and are in accordance with contractual terms.
- 2) To facilitate efficient administration of the contracts and prompt review and payment of invoices.
- 3) To facilitate analysis of contractual service costs for planning and budgeting purposes.
- 4) To prevent inadvertent disclosure of privileged information and/or strategies.

Permitted Work:

All professional services are subject to the provisions of the Advisor contracts. The Council views every bill from an Advisor as a certification by the Advisor and his or her firm that the services and disbursements reflected on the bill are reasonable for the matter involved and necessary for the proper provision of professional services to the Council. Staffing shall be efficient. Time and disbursements that are not necessary for the cost-effective handling of a matter should not be billed. Compliance with this procedure will avoid delays in processing invoices.

Subject to additional direction given by the Council, the UCTTC, or its Chair, with a copy to CURO, the following work may be performed, provided it is in compliance with the remaining Work and Billing Practices hereafter:

- 1) Reasonable monitoring and information gathering with respect to issues that are of interest to the UCTTC.

- 2) Strategic analysis, reports and discussions with other consultants, members of the Council, and Council employees.
- 3) Contacts with persons interested in issues that are, or could be, before the UCTTC.
- 4) Consultation, coordination and advocacy with others to ensure that the interests of the UCTTC are served; and in connection therewith, personal appearances and the preparation and filing of documents.
- 5) Intervention and participation in Administrative or Judicial proceedings; and in connection therewith, personal appearances and the preparation and filing of documents, pleadings, etc.
- 6) Lobbying or monitoring activities with respect to legislation of material interest to the UCTTC; and in connection therewith, personal appearances and the preparation and filing of documents.
- 7) Preparation of draft legislation, resolutions, recommendations and decisions.
- 8) Attending meetings and coordinating activities with other city agencies and other bodies.
- 9) Telephone conferences and attending meetings with, and preparing materials for, the Council, its members, the UCTTC, and CURO on utility regulatory and such other matters as the Council, UCTTC or individual members thereof may request.

Process for Billing and Payment:

Invoices shall be submitted electronically to CURO on a monthly basis by the end of the month following the month in which charges are made. If requested, Advisors shall concurrently provide copies to the Chairperson of the UCTTC and the Council Chief of Staff or Interim Council Chief of Staff. Unless authorized by CURO, invoices should not include time from outside the statement's monthly billing period. Within 30 days of receipt of the invoice, CURO shall complete its review and provide the Chairperson of the UCTTC with a memo containing any recommendations and a request for approval for CURO to process the invoice for payment.

Upon receipt of the recommendations and request for approval to process for payment, the Chairperson of the UCTTC shall complete the invoice review and by memo to CURO: 1) authorize the payment of the original invoice amount, or 2) substitute a different amount that is authorized for payment. If a different-than-original invoice amount is authorized for payment by CURO, the Council Chief of Staff or Interim Council Chief of Staff, and submitting Advisor should be immediately notified, with opportunity given for discussion of the substituted amount. Upon the conclusion of this discussion, the Chairperson of the UCTTC shall make a final determination of the amount authorized for payment and authorize CURO to immediately process for payment of that amount.

Billings:

At the commencement of the contract period, Advisors shall identify, and the Chair of the UCTTC shall approve, with a copy to CURO, all work categories in which Permitted Work as described herein is expected to be necessary. Legal and technical Advisors for Utilities and legal and technical Advisors for Cable, Telecommunications and Technology shall identify categories of work in a clear and concise manner and shall include the use of FERC and Council docket numbers, rulemaking proceedings, resolutions and motion numbers as well as clear and concise descriptions of the work performed. The Advisors shall coordinate these identified work categories with their counterpart Advisors within each of these two areas of work covered by the UCTTC, so that categories of work appearing on bills are as uniform as reasonably achievable for every Advisor billing, within each of the two areas of work.

If an Advisor performs work on account of or at the direction of the Council Chief of Staff, Council Fiscal, CURO or an individual Councilmember, other than the current Chair of the UCTTC, the associated billings should identify the party by use of the following codes.

Council Entity	Client code
Council Chief of Staff	CC2010
At-Large Division 1	CC2011
At-Large Division 2	CC2012
District "A"	CC2013
District "B"	CC2014
District "C"	CC2015
District "D"	CC2016
District "E"	CC2017
Council Fiscal	CC2040 -
Council Utilities	CC2050

If, during a contract period, Advisors determine a new category of work is needed, the Chair of the UCTTC shall be promptly notified, with a copy to CURO, following which the Chair of the UCTTC shall approve the new category before it is used in a bill. Existing categories should not be used for work for which a new category should be created.

A "Miscellaneous or General Matters" category may be used for entries which do not fit into existing categories and do not total greater than 10% of the total bill for the month. Entries in this category should include a sufficient description so that it can be clear to the reviewer what work was performed.

Final work product for which time and expense entries appear on an invoice will be provided to the Chair of the UCTTC, any Council Member or CURO upon request, to the extent public disclosure will not jeopardize or injure the interests of the Council. If an Advisor determines that it should not be promptly produced in order to protect the interests of the Council, the reason why it is not being provided shall be timely communicated to CURO

Efforts should be made to identify other clients of Advisors not in conflict with the Council,

who could be expected to benefit from research or other Permitted Work that Advisors perform for the Council. If work benefits other clients of Advisor, only the appropriate proportionate share of the cost should be billed to the Council.

Time records, by date, for each professional rendering service within each category shall be entered in increments of 1/10th of hours (e.g.: ".7," or "1.6") and include a brief description of the work performed.

"Block billings" (billings combining a number of activities under a single time entry with little or no description of individual tasks performed or the time taken for each) should not occur. An occasional exception may be made when brief work activities within a category cannot be accurately or efficiently billed by making individual time entries, in which case a description of the tasks performed may be provided under a single time entry for a short period of total time. This exception should be limited to a circumstance where a number of short tasks within a category are performed on the same day and billing for each would significantly increase the total time billed for the tasks.

Billings should account for time without disclosing sensitive areas of strategic focus. When the subject of the work is sensitive—for example if the work involves strategy pertaining to a current or potential administrative or court proceeding—the specific nature of the discussions, analysis, or meeting, as well as the other persons involved, may need to be left out of the detailed time summaries. However, this information should be retained by Advisors, available to be immediately provided to the UCTTC or CURO if requested.

Advisors should review each billing prior to its submission to determine that each billing entry clearly and succinctly describes the task performed and the reason for the task, if the reason is not apparent from the task description itself. Individual and total charges for time and expenses should be checked to make certain they are accurate.

When describing work performed, task descriptions should be written in plain English. Advisors should not use overly general descriptions such as:

- Attention to or request attention to
- Review
- Continued (followed by a task)
- Organize file
- Follow up

In all cases, the Advisors should use appropriate descriptors that indicate the work that was performed and not use overly general descriptions. These would include, but not be limited to, the following:

- Read _____
- Review of_(specify)_____
- Write _____
- Prepare for _____
- Edit (or Revise) _____
- Attend _____
- Conduct _____
- Phone conference with regarding _____

- Email to (or from) regarding _____
- Draft (in relation to reports, pleadings, motions and briefs) _____
- Correspondence with _____ regarding _____
- Research regarding _____
- Write memorandum to _____ regarding _____
- Meeting with _____ regarding _____
- Run analysis of _____
- Create engineering models
- Run assumptions for _____

Utility Advisors: work related to the Federal Energy Regulatory Commission (FERC) shall be billed under the specific FERC docket or rulemaking or simultaneous multiple dockets, for which the work is performed with an adequate description of the work activity performed provided in individual time entries.

Advisors should assign work internally within their firms to use the least expensive person to do work consistent with the best representation of the Council's interest. For example, a legal assistant, paralegal, or law clerk should be used to do routine work that does not require a more experienced lawyer's services. If an attorney chooses to perform research that could be as effectively performed by a law clerk, or a technical advisor chooses to perform research that could be as effectively handled by a research assistant, the professional should not bill at an hourly rate greater than the rate charged for a law clerk or research assistant unless sufficient explanation is provided for the necessity of using the higher-billing person.

Non-billable work (for which Advisors will not be paid):

- 1) Research or review of industry literature or trade publications.
- 2) Attendance at professional conferences, educational seminars, or continuing legal education activities.
- 3) Research and review of basic substantive law at issue in the matter for which the firm was retained.
- 4) Advisors should be judicious in limiting the number of persons in attendance at meetings (whether telephonic, web based or in person), depositions, hearings or other proceedings always considering how best to protect the Council's interests. The Council specifically recognizes that some matters require differing kinds of expertise among the professionals in the Advisor firms which would require more than one person of an Advisor firm in attendance at such meetings, depositions, hearings, negotiations, strategy sessions and the like in furtherance of the Council's interests. When more than one person within the Advisor's firm attends the same meeting, deposition, hearing or other proceeding, CURO may request or the Chair of the UCTTC may require an explanation of why it was in the best interest of the Council. In all cases where more than one person within an Advisor's firm bills for attendance at a meeting, deposition, hearing or other proceeding, the Chair of the UCTTC may decline the charge after discussion with the Advisor. Advisors should invite CURO to meetings when practical.

- 5) Administrative tasks, such as support or clerical services (work customarily performed by secretaries, word processors, proofreaders, managing clerks, information system technicians, librarians, computer operators, etc., including but not limited to photocopying, file maintenance, filing or delivering materials, arranging travel or scheduling depositions or meetings) shall not be billed, either regularly or as overtime. Attorneys, paralegals, and law clerks shall not bill for performing such tasks.
- 6) Time spent preparing, discussing, or supporting Advisor's invoices, including time or expense associated with delivering or collecting Advisor's invoices.
- 7) Downtime or learning time that may result from staffing changes.
- 8) Time spent on staffing issues.
- 9) Time spent by Advisors traveling to or from New Orleans. If Permitted Work is performed during such travel, it may be billed as described herein.
- 10) Time spent traveling to attend MISO, OMS, or ERSC-related meetings or events. If Permitted Work is performed during such travel, it may be billed as described herein.

Expenses:

To qualify for reimbursement, expenses should be reasonable, documented and itemized, and occur in conjunction with services described in the time entries. Expenses should identify the bill category to which they pertain. The number of persons present in connection with an expense item should be indicated where such information is relevant to ensure that the expense is reasonable.

Fees charged by electronic or other research services, including library fees, Westlaw, Lexis and other online services are considered general overhead and are not reimbursable.

Costs of court reporters and transcripts shall be billed at actual cost. Advisors should obtain the lowest possible charge reasonably available for court reporting fees, including any possible volume discounts. The least-expensive sufficient option for transcripts shall be selected. Any billing for more than a single transcript of the same testimony or event for all Advisors must be adequately explained; otherwise, the billing attorney shall receive the transcript and provide for the distribution of copies to other Advisors as an administrative expense to the extent permitted by law.

Electronic transfer of documents (e.g., e-mail) shall be used if possible. Billings for express mail or courier charges will not be paid unless an acceptable explanation is provided of why such measures were necessary. If such charges are necessary, actual reasonable charges will be reimbursed. If an Advisor has a volume discount arrangement with a vendor, charges shall be made on that basis. Charges for time spent preparing express mail packages are not reimbursable.

Items or services that will not be reimbursed: customary office supplies; routine postage; facsimile charges; fees incurred by a timekeeper for printing or scanning; and long-distance charges or other telephone charges for phone calls made at an Advisor's office or place of business.

Photocopying charges not exceeding \$0.10 per page will be reimbursed. If the use of an outside copying service would be more economical and confidentiality is not an issue, the service should be used.

Approval must be obtained in writing from CURO prior to using any third-party services for which reimbursement will be requested, other than legal-process servers and court reporters. If approved, actual reasonable charges will be reimbursed.

All necessary and ordinary travel expenses are reimbursable only if prior authorization for the travel is provided by CURO or the Chair of the UCTTC. "Ordinary" as used here means the lowest-cost airfare that is reasonably available, reasonable-cost ground transportation and parking, and meals that do not exceed in cost the amounts allowed employees of the City of New Orleans as described in City Policy Memo 9 (R).

Bills containing requests for reimbursement should include the dates, the destination of travel, and the name of the traveler. Receipts should be provided. In rare cases, exceptions to this required detail may be approved by CURO for reasons of confidentiality or where it is clear that requirements are unduly burdensome or otherwise not feasible. Otherwise, the following expenses require receipts: telephone bills, reproductions/copies, ground transportation, airfare, auto rental, taxi, hotel/lodging, third party, research, business meals, publications, courier services, overnight delivery services, special mail handling, postage, and individual miscellaneous expenses. In cases where no receipt is available, such as internal office photocopying, the bill should contain office records verifying the charge.

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[END OF AMENDMENT]