

1 **AGREEMENT FOR PROFESSIONAL SERVICES**

2 **BETWEEN**

3 **THE CITY OF NEW ORLEANS**

4 **AND**

5 **THE ESTOPINAL GROUP**

6 THIS AGREEMENT made this 1st day of January, 2009 (the effective date), by and between the
7 City of New Orleans, herein represented by Jacquelyn Brechtel Clarkson, Council President
8 (hereinafter referred to as "the City"), and The Estopinal Group represented by Denise Estopinal,
9 (hereinafter referred to as "Contractor").

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

12 **WHEREAS**, the City Council recognizes the need for effective communications between
13 the Council and the public, and between the Council and the news media; and

14 **WHEREAS**, following completion of a Request for Qualifications process conducted in
15 compliance with Council Rule 45, Motion 07-464 of October 4, 2007 authorized a professional
16 services contract to retain The Estopinal Group as the Council's Communications Consultant;
17 and

18 **WHEREAS**, The Estopinal Group, whose Taxpayer ID Number is 208630628, possesses
19 the required skills and experience and has provided, since October 4, 2007, and is willing to
20 provide, for an additional year, communications consultant services to the Council; and

21 **WHEREAS**, the Council wishes to continue this arrangement and to that end has
22 adopted Motion M-08-687 authorizing the Council President to renew/extend the professional
23 services contract with The Estopinal Group as Communications Consultant to the Council for an

1 additional one year term; and

2 **WHEREAS**, the renewal/extension of this contract for 2009 will facilitate the continuity
3 of services described in the contract; and

4 **WHEREAS**, the City recognizes and acknowledges its responsibility to provide
5 Contractor accurate information in a timely manner and that the provision of such information is
6 an important factor in Contractor's ability to successfully perform under this contract; now,
7 therefore

8

9

ARTICLE I. SCOPE OF SERVICES

10 **Section 1. CONTRACTOR AGREES TO:**

11 **I. SCOPE OF SERVICES**

12 **A. CONTRACTOR AGREES TO:**

13 1. Develop strategy for consistent, informative communication from the Council to
14 the public regarding issues coming before the Council and its committees and
15 actions regarding such issues, including the initiation of ideas on when and how to
16 best inform the public.

17 2. Arrange for and coordinate media coverage of issues before the Council as a
18 whole and its committees, including organizing press conferences and interviews
19 and arranging appearances on appropriate media outlets.

20 3. Assist in the development of educational materials, news stories and briefing
21 documents on long term concerns, as well as current issues, to improve the quality
22 and consistency of information provided to the public, including the writing of
23 technical information in easily readable and understandable form and issuing

- 1 press releases prior to and following Council/Committee meetings.
- 2 4. Coordinate Council use of the Government Services Access Cable T.V. channel
3 with the government services access provider.
- 4 5. Make recommendations to the Council on more effective and informative
5 presentation of Council meetings on cable television.
- 6 6. Advise Councilmembers and Council staff on public notices and similar
7 communications intended for the press and general public.
- 8 7. Continue development and use of communication technologies (e.g. Internet,
9 other interactive media, etc.) for and on behalf of the Council.
- 10 8. Pursuant to Council Rule 46, on or before February 15th of each year: A) develop
11 an agenda of action items that reflect the policy decisions established by the
12 Council at its annual retreat in the previous fall; B) prepare and distribute to the
13 public a summary of Council accomplishments, including legislative action and
14 projects completed during the preceding year by the Council as a whole and by
15 individual Council offices.
- 16 9. Maintain and recommend improvements to the Council's website and ensure that
17 items of public interest are consistently posted in a timely manner. Implement
18 improvements to the website approved by the Council Chief of Staff.
- 19 10. Provide a camera or other photographic equipment at each committee or council
20 meeting staffed by the contractor in order to photographically document
21 significant events and/or visiting dignitaries.
- 22 11. Seek the approval of the Council Chief of Staff prior to subcontracting with any
23 individual or entity to perform any services described herein.

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

- 2 1. To use best efforts to provide Contractor access to information necessary to
3 Contractor's successful performance of its duties under the contract.
- 4 2. That the Contractor may request review of any proposed documents, materials or
5 communications of a public information nature. If request for review is approved,
6 the City will endeavor to provide such proposed documents, materials or
7 communications in a timely manner and in advance of the anticipated publication
8 date of such proposed documents, materials or communications.

9 **ARTICLE II. REPRESENTATIONS AND WARRANTIES**

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

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

14 Section 2. Representations and Warranties of Contractor. Contractor represents and warrants
15 that:

- 16 A. Contractor has not employed or retained any entity or person, other than a bona fide
17 employee working solely for Contractor, to solicit or secure this Agreement nor has
18 Contractor paid or agreed to pay any entity or person, other than a bona fide employee,
19 any gift, commission, percentage, brokerage or any other such fee for the purpose of
20 assisting Contractor in securing this Agreement. Contractor acknowledges its
21 understanding that any gifts made or fees paid in contravention of this representation and
22 warranty shall be considered bribery pursuant to City Code Section 70-509 and shall
23 subject the offender to criminal penalties in addition to suspension from participation in

1 City contracting for a period of not less than three years. The execution of this
2 Agreement by Contractor's duly authorized representative shall be deemed a sworn
3 statement by Contractor of its compliance with this representation and warranty, as
4 required by City Code Section 46-51;

5 B. Contractor, through its duly authorized representative, has the full power and authority to
6 enter into and execute this Agreement and, as such, this Agreement is legally binding
7 upon and enforceable against Contractor in accordance with its terms;

8 C. Contractor is not under any obligation to any other party that would be inconsistent with or
9 in conflict with this Agreement or that would prevent, limit or impair in any way its
10 performance of any obligations hereunder;

11 D. Contractor has the requisite expertise, qualifications, staff, materials and equipment in
12 place and available to enable it to fully perform the Services and Contractor, along with
13 its employees, as required, and all sub-contractors, if any and as required, possess all
14 necessary permits, licenses, consents, registrations and/or certifications required under
15 federal, state and/or local law to perform the Services;

16 E. As of the Effective Date of this Agreement, Contractor has no knowledge of any
17 undisclosed fact that could materially adversely affect its condition (financial or
18 otherwise), business operations or its ability to fulfill its obligations under this
19 Agreement;

20 F. Contractor is not in breach of any federal, state or local statute or regulation applicable to
21 Contractor or its operations;

22 G. Contractor's work shall be accurate and free from any material errors. Contractor's
23 duties as set forth in this Agreement shall at no time be in any way diminished by reason

1 of any approval by City nor shall Contractor be released from liability by reason of such
2 approval by City—it being understood that City, at all times, is ultimately relying upon
3 Contractor’s skill and knowledge in performing the Services;

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

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

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

13 **ARTICLE III. COMPENSATION**

14 A. 1. All services will be billed at rates ranging from \$75.00 to \$125.00
15 per hour, representing a variety of levels of professional service.

16 2. Maximum compensation shall not exceed \$175,000.00.

17 B. Invoices shall contain an itemized list of services performed.

18 C. Invoices shall be paid within thirty (30) days of receipt; payments over thirty (30)
19 days but less than forty-five (45) days at amount plus 1.5%; payments over 45
20 days at amount plus 5%, subject to II A 2 above.

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

23 Section 2. Truth-In-Negotiation. As of the Effective Date of this Agreement, Contractor

1 represents and warrants that the rates charged City as set forth in this Article III for the
2 performance of the Services are no higher than those charged Contractor's most favored
3 customer for the same or substantially similar services. In the event Contractor's "most favored
4 customer" rates are reduced during the term of this Agreement, Contractor shall be obligated to
5 promptly notify City of such reduction in writing, and such reduced rates shall apply to any services
6 provided on or after the date that Contractor first reduced such rates. City shall have the right to
7 enforce this provision for up to one (1) year following the termination of this Agreement.

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

12 Section 4. Maximum Compensation; Subject to Appropriation. City's obligation to compensate
13 Contractor hereunder shall not at any time exceed the maximum compensation, in the aggregate,
14 of \$175,000.00. Further, all compensation owed Contractor pursuant to this Agreement is
15 contingent upon the appropriation and allocation of funds by City.

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

23 Section 6. No Payments in Excess of Maximum Compensation. Officers and employees of City.

1 are not authorized to offer or promise to Contractor additional funding for the contract in excess
2 of the maximum amount of funding set forth above. Additional funding for services provided
3 under this Agreement, unless this Agreement has been amended in accordance with its terms to
4 authorize such increase and the Department of Finance has certified the availability of such
5 additional funding. Absent the prior duly authorized amendment of this Agreement and the
6 necessary certification of the Department of Finance, City shall not be required to honor—and
7 will not remit to Contractor—any offered or promised additional funding for any of the Services
8 performed pursuant to this Agreement in excess of the maximum amount set forth above.

9 **ARTICLE IV. TERM**

10 Section 1. Term. This Agreement shall commence on the Effective Date and shall continue until
11 December 31, 2009. It is understood and acknowledged by Contractor that the Services
12 described above are expected to be completed within this time period.

13 Section 2. Renewal. At the option of City, this Agreement may be renewed on an annual basis
14 for no longer than two one-year periods, beginning January 1, 2010, provided that (A) additional
15 funding, if required, is allocated by City and incorporated herein by a duly authorized
16 amendment to this Agreement and (B) the renewal of this Agreement will facilitate the
17 continuity of the services described herein.

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

19 Section 1. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor
20 agrees not to discriminate on the basis, whether in fact or perception, of a person's race, color,
21 creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic
22 partner status, marital status, physical or mental disability or AIDS- or HIV-status against (A)
23 any employee of or any City employee working with Contractor in any of Contractor's

1 operations within Orleans Parish or (B) any person seeking accommodations, advantages,
2 facilities, privileges, services, or membership in all business, social, or other establishments or
3 organizations operated by Contractor. Contractor agrees to comply with and abide by all
4 applicable federal, state and local laws relating to non-discrimination, including, without
5 limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973
6 and the Americans with Disabilities Act of 1990.

7 Section 2. Equal Employment Opportunity. Contractor further agrees not to discriminate on the
8 basis, whether in fact or perception, of a person's race, color, creed, religion, national origin,
9 ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status,
10 physical or mental disability or AIDS- or HIV-status against any applicant for employment with
11 Contractor. Further, Contractor agrees to take affirmative action to ensure that that the
12 applicants are considered for employment and that employees are treated during employment
13 without unlawful regard to such person's race, color, creed, religion, national origin, ancestry,
14 age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or
15 mental disability or AIDS- or HIV-status. Such action shall include, without limitation, the
16 following areas: employment, promotion, demotion, transfer or layoff; recruitment or
17 recruitment compensation; and selection for training. Contractor agrees to post in conspicuous
18 places, available to employees and applicants for employment, notices setting forth the
19 provisions of this non-discrimination clause. Further, Contractor agrees all solicitations or
20 advertisements for employees placed by or on behalf of Contractor shall state that all qualified
21 applicants will receive consideration for employment without regard to race, creed, color, sex or
22 national origin.

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

8 **ARTICLE V. INDEMNIFICATION**

9 Section 1. Duty to Indemnify City Against Loss. To the fullest extent permitted by law,
10 Contractor shall protect, defend, indemnify and hold harmless City, its agents, elected officials
11 and employees (collectively, the "Indemnified Parties") from and against all claims, actions,
12 liabilities, losses (including, without limitation, economic losses) and costs, arising out of or
13 related to (a) any actual or alleged act or omission in the performance of the Services by
14 Contractor or any subcontractor or (b) any act outside the scope of the Services by Contractor or
15 any subcontractor. By way of illustration—not limitation, Contractor's obligation to indemnify
16 City shall extend to the following, provided that such claims arise out of or relate to the
17 performance of the Services by Contractor: (i) personal injury claims, (ii) property damage or
18 loss claims, (iii) fines or sanctions resulting from violations of any law, statute, ordinance, rule,
19 regulation or intellectual property rights by Contractor, and (iv) liens, claims or actions made by
20 Contractor, any subcontractor or any employees thereof under workers compensation acts,
21 disability benefits acts, other employee benefit acts or any statutory bar.

22 Section 2. Limit on Duty to Indemnify. Notwithstanding anything to the contrary herein,
23 Contractor shall not be required to indemnify the Indemnified Parties for any loss that results

1 from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that
2 Contractor or any subcontractor did not contribute to such gross negligence or willful
3 misconduct. . Contractor shall also not be required to indemnify any party to this agreement if
4 the City Council or any agency or subdivision thereof disregards the advice of Contractor.

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

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

13 **ARTICLE VI. INDEPENDENT CONTRACTOR STATUS**

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

1 Section 2. No Withholding; Form 1099 Reporting. Contractor understands and agrees that (a) City
2 will not withhold on behalf of Contractor any sums for any federal, state or local income tax,
3 unemployment insurance, social security, or any other withholding pursuant to any law or
4 requirement of any governmental body, and that City will not make available to Contractor any of
5 the benefits afforded to employees of City; (b) all of such withholdings and benefits, if applicable,
6 are the sole responsibility of Contractor; and (c) Contractor will indemnify and hold City harmless
7 from any and all loss or liability arising with respect to any such withholdings and benefits. The
8 parties agree that if the Internal Revenue Service questions or challenges Contractor's independent
9 contractor status, both Contractor and City shall have the right to participate in any discussion or
10 negotiation with the Internal Revenue Service. Contractor acknowledges that all compensation paid
11 to Contractor pursuant to this Agreement will be reported annually by City to the Internal Revenue
12 Service on Form 1099.

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

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

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

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

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

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

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

20 Section 3. Ownership. All data collected and all products of work prepared, created or modified
21 by Contractor in the performance of its obligations under this Agreement, including, without
22 limitation, any and all notes, tables, graphs, reports, files, computer programs, source code,
23 documents, records, disks, original drawings or other such material, regardless of form and

1 whether finished or unfinished, (collectively, "Work Product") shall become the exclusive
2 property of City, and no reproduction of any portions of such Work Product may be made in any
3 form without the express written consent of City. City shall have all right, title and interest in
4 such Work Product, including, without limitation, the right to secure and maintain the copyright,
5 trademark and/or patent of Work Product in the name of City. All such Work Product may be
6 used and distributed for any purpose deemed appropriate by City without the consent of and for
7 no additional consideration owing to Contractor.

8 **ARTICLE IX. TERMINATION**

9 Section 1. Termination for Cause. City and Contractor shall each have the right to terminate this
10 Agreement for cause, effective immediately upon the giving of written notice to the other party
11 of its intent to terminate and the reasons therefor. If the termination for cause is subsequently
12 challenged in a court of law and if the challenging party prevails, the termination for cause shall
13 be deemed to be a termination for convenience and shall be effective thirty (30) days from the
14 date that the original written notice of termination for cause was given to the challenging party
15 and no further notice shall be required.

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

21 Section 3. Survival of Certain Provisions. All representations and warranties and all
22 responsibilities regarding record retention, access and ownership, cooperation with City
23 Inspector General investigations, indemnification and payment for services rendered shall

1 survive the termination of this Agreement and continue in full force and effect.

2 **ARTICLE X. INSURANCE**

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

7 **ARTICLE XI. NOTICE**

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

10 If to City: Ronald J. Pursell, City Council Chief of Staff

11 New Orleans City Council, Room 1E06

12 City Hall, 1300 Perdido St.

13 New Orleans, Louisiana 70112

14 and Penya M. Moses-Fields

15 City Attorney

16 City of New Orleans

17 1300 Perdido St., Room 5E03

18 New Orleans, LA 70112

19 If to Contractor:

20 Denise Estopinal

21 The Estopinal Group

22 501 Basin Street, Suite B

23 New Orleans, LA 70112

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

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

6 **ARTICLE XII**

7 **GENERAL PROVISIONS**

8 Section 1. No Assignment Without Consent. This Agreement is personal to each of the parties
9 hereto, and neither party may assign or delegate any rights or obligations hereunder without first
10 obtaining the written consent of the other party. Subcontractors must be approved by Motion of the
11 City Council.

12 Section 2. Conflict of Interest.

13 Contractor agrees to decline any offer of work, whether as an independent contractor or
14 employee, if such work would (a) affect Contractor's independent professional judgment with
15 respect to its performance of the Services or (b) in any way interfere with Contractor's ability to
16 discharge any of its obligations under this Agreement. The initial determination of whether any
17 offer of work would present such a conflict of interest shall rest with Contractor. However,
18 Contractor shall be obligated to notify the Council Chief of Staff and provide full disclosure as to
19 any possible adverse effects of such work as it relates to Contractor's independent professional
20 judgment or the discharge of any of its obligations under this Agreement. Final decision as to
21 whether any such work proposes a prohibited conflict of interest shall rest with the Council of
22 the City of New Orleans. Such decision by the Council as to whether any such work constitutes
23 a prohibited conflict of interest should be made only after the Council seeks advice from the City

1 Attorney. The City Attorney may provide any advice to the Council that he/she deems
2 appropriate.

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

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

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

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

23 Exhibit A Credentials—Resumés, Licenses or Certifications; and

1 Exhibit B IRS Form W-9.

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

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

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

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

19 Section 11. Non-Exclusive. This Agreement shall be non-exclusive. Accordingly, Contractor
20 shall be free to provide services to other clients, and City shall be free to engage the services of
21 other contractors for the provision of some or all of the Services set forth in this Agreement.

22 Section 12. Prohibition Against Financial Interest in Agreement. No elected official or
23 employee of City shall have a financial interest, direct or indirect, in this Agreement. For

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

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

1 Section 14. Complete Agreement. Contractor, The Estopinal Group, specifically acknowledges
2 that in entering into and accepting this Agreement (comprised of 20 pages), Contractor relies solely
3 upon the representations and agreements contained in this
4 Agreement and no others. This Agreement supersedes and replaces any and all prior agreements,
5 negotiations and discussions between the parties hereto with regard to the terms, obligations and
6 conditions herein.

7 IN WITNESS WHEREOF:

CITY OF NEW ORLEANS

8
9
10 Ruth Simmons

Jacquelyn Brechtel Clarkson
BY: JACQUELYN BRECHTEL CLARKSON

11
12
13 Jessie Lopez

COUNCIL PRESIDENT

14
15 IN WITNESS WHEREOF:

THE ESTOPINAL GROUP.

16
17
18 Emilio Perez

Denise Estopinal

Denise Estopinal
501 Basin Street, Suite B
New Orleans, LA 70112

19
20
21
22 Carey Jiran

Telephone: (504) 296-9233
Taxpayer Identification Number: 208630628



23
24
25
26
27 APPROVED:

Victoria Hines

LAW DEPARTMENT

MOTION
M-08-687

CITY HALL: December 18, 2008

BY: COUNCILMEMBERS CLARKSON,  FIELKOW,  CARTER AND WILLARD-LEWIS

WHEREAS, by Motion M-07-464, after competitive selection, the City Council authorized retention of The Estopinal Group (TEG) to provide communications consultant services to the City Council; and

WHEREAS, pursuant to Motion M-07-464, terms of the Request for Proposals issued April 5, 2007, and the December 20, 2007 contract with TEG, the Council is authorized to renew and extend its existing contract with The Estopinal Group to provide communications consulting 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 The Estopinal Group extending the December 20, 2007 contract, as amended by the agreement dated October 24, 2008, through 2009 and setting the maximum compensation under such contract to up to One Hundred Seventy-Five thousand Dollars (\$175,000.00).

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: Carter, Clarkson, Fielkow, Midura, Willard-Lewis - 5

NAYS: 0

ABSENT: Head, Hedge-Morrell (Temporarily Out of Chamber) - 2

AND THE MOTION WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY


CLERK OF COUNCIL