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AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

THE CITY OF NEW ORLEANS

AND

JEFFREY S. GULIN

THIS AGREEMENT is made and entered into as of the 1st day of January 2011, by and between the Council of the City of New Orleans, represented by Arnie Fielkow, President of the Council (hereinafter referred to as "City") acting on behalf of the City Council and Jeffrey S. Gulin (hereinafter sometimes referred to as "Contractor").

WITNESSETH

WHEREAS, to address the complex legal and technical issues necessary to properly meet its responsibility, the Council requires the services of a hearing officer to supervise ongoing proceedings in the Council’s Utility Dockets and will be conducting a competitive selection in accordance with Council Rule 45 to address this requirement on a long term basis; and

WHEREAS, pursuant to Section 3-130 of the Home Rule Charter of the City of New Orleans, the New Orleans City Council exercises powers of supervision, regulation, and control over electric and gas utilities providing service in the City; and

WHEREAS, in the interim and without prejudice to the competitive selection process the City Council requires the continued services of Jeffrey Gulin, who has supervised ongoing proceedings, including the recently concluded Entergy New Orleans, Inc. (“ENO”) rate case; and

1 **WHEREAS**, the need for ongoing interim services can be addressed with a contract in an
2 amount below the competitive selection threshold established by the City Code and Council Rule 45;
3 and

4 **WHEREAS**, the Council by Motion M-11- 58 authorized the President of the Council to
5 sign a professional service contract with Jeffrey S. Gulin for the contract amount as specified
6 herein; and

7 **NOW, THEREFORE**, the City of New Orleans and Jeffrey S. Gulin for the
8 consideration, and under conditions set forth, do agree as follows:

9 **I. SCOPE OF SERVICES**

10 **A. Contractor Agrees To:**

11 Serve as presiding officer in connection with New Orleans City Council regulatory
12 proceedings pursuant to Article III of Chapter 158 of the Code of the City of New
13 Orleans. Assignments of responsibility for proceedings are to be made directly by the
14 City Council or through the Council Utilities Regulatory Office.

15 Services to be performed include, but are not limited to:

- 16 (1) presiding over and conducting evidentiary administrative hearings;
17 (2) assembling and certifying the evidentiary record in such proceedings to the City
18 Council;
19 (3) administration of oaths and ruling on evidentiary and other matters, as
20 appropriate and
21 (4) performing such other related duties as may be required pursuant to lawful
22 authority delegated by the City council or as set forth in the City Code.

1 **B. The City Agrees To:**

- 2 1. Provide contract administration through the City Council Utilities Regulatory
3 Office.
- 4 2. Provide access to records, documents and other information as may be
5 required. Additional support and information may be directed to the Council
6 Utilities Regulatory Office.

7 **II. COMPENSATION**

8 The City agrees to pay the Contractor a sum not to exceed Fifteen Thousand Dollars
9 (\$15,000.00) for all services required herein, which shall include reimbursement for expenses
10 incurred. The billing rate for professional services shall be \$400.00 per hour. If there any
11 necessary and ordinary expenses attached to the work of Jeffrey S. Gulin. These expenses, in
12 addition to the fees shall not exceed Fifteen Thousand Five Dollars (\$15,000.00). Jeffrey S.
13 Gulin shall submit to the City a detailed monthly invoice for payment of services provided.
14 This agreement is contingent upon the appropriation and allocation of funds by the City of
15 New Orleans.

16 **III. PAYMENT**

17 Payment under this agreement shall be made pursuant to detailed monthly invoices submitted
18 by the firm, subject to review and approval by the City for payment. Upon authorization
19 through the City Council Utilities Regulatory Office such invoices may be submitted to the
20 Finance Department for payment by the City or, alternatively, when such invoices would be
21 reimbursable by a utility subject to regulation under Section 3-130 of the Home Rule Charter
22 and reimbursable pursuant to Section 3-130 (5) of the Home Rule Charter, the City Council
23 Utilities Regulatory Office may submit such invoices for payment to such regulated utility

1 company. Payments in the name of the firm under this provision shall then be sent to the
2 Council Utilities Regulatory Office which shall immediately forward such authorized
3 payment to the firm. The Council Utilities Regulatory Office shall maintain records of such
4 payments which shall be public records and shall also forward copies of such records as
5 required to the CAO and Department of Finance. Such payments, when made by such utility
6 company through the City Council's Utilities Regulatory Office shall fully discharge the
7 City's obligation for such payment under this contract and be included in and applied to the
8 maximum compensation limits of this contract.

9 **IV. EQUAL EMPLOYMENT OPPORTUNITY:**

10 In all hiring or employment made possible by or resulting from this Contract, there (1) will
11 not be any discrimination against any employee or applicant for employment because of race,
12 color, religion, gender, age, physical or mental disability, national origin, sexual orientation,
13 creed, culture or ancestry, and (2) where applicable, affirmative action will be taken to ensure
14 that the Contractor's employees are treated during employment without regard to their race,
15 color, religion, gender, age, physical or mental disability, national origin, sexual orientation,
16 creed, culture or ancestry. This requirement shall apply to, but not be limited to the
17 following: employment, upgrading, demotion, or transfer; recruitment or recruitment
18 advertising; layoff or termination; rates of pay or other forms of compensation; and selection
19 for training, including apprenticeship. All solicitations or advertisements for employees shall
20 state that all qualified applicants will receive consideration for employment without regard to
21 race, color, religion, gender, age, physical or mental disability, national origin, sexual
22 orientation, creed, culture or ancestry.

1 **V. ASSIGNABILITY:**

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

4 **VI. CONFLICT OF INTEREST:**

5 In the interest of ensuring that efforts of the Contractor do not conflict with the interest of the
6 City, and in recognition of Contractor's professional responsibility to the City, the Contractor
7 agrees to decline any offer of employment if its independent, professional work on behalf of
8 the City is likely to be adversely affected by the acceptance of such employment. The initial
9 determination of such a possibility rests with the Contractor. It is incumbent upon the
10 Contractor to notify the City and provide full disclosure of the possible effects of such
11 employment on the Contractor's independent, professional work in behalf of the City. Final
12 decision on any disputed offers of other employment for the Contractor shall rest with the
13 City.

14 **VII. INDEMNIFICATION:**

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

1 **VIII. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION**

2 **COVERAGE:**

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

10 **IX. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT**

11 **COMPENSATION COVERAGE:**

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

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

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

4 **X. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS:**

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

9 **XI. JURISDICTION:**

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

13 **XII. DURATION OF AGREEMENT:**

14 The services to be provided under the terms of this Agreement shall begin on
15 January 1, 2011 and shall end no later than December 31, 2011. It is understood and
16 acknowledged by all signators to this agreement that work described under these terms is
17 to be accomplished during the time period specified herein. The terms, conditions and/or
18 duration of this contract may be modified by an executed, written amendment to this
19 contract.

20 **XIII. CANCELLATION:**

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

1 **XIV. SOLICITATION:**

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

7 **XV. OFFICE OF INSPECTOR GENERAL**

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

12 **XVI. SUBCONTRACTS:**

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

20 **XVII. EXPENSES**

21 Unless otherwise approved by the Contracting Officer of the City Council, reimbursable
22 expenses shall be limited as follows: meals at reasonable and customary costs for the city in
23 which they are consumed absent charges for alcoholic beverages, air transportation limited to

1 lowest available coach fares at the time of booking, lodging expenses in New Orleans not to
2 exceed federal per diem rate for hotels in New Orleans to the extent achievable without an
3 official governmental identification for the personnel; postage, overnight delivery or courier
4 services at contractor's actual cost; facsimile transmissions and long distance telephone
5 charges at contractor's actual cost; copies at \$0.10 per page; computerized research at
6 contractor's actual cost.

7 **XVIII. LIMITATIONS**

8 For the attendance at all meetings of the Council, the CUC, briefings of Councilmembers,
9 and representation before any court or regulatory body and during the conduct of regulatory
10 proceedings before the Council and other regulatory bodies, the Council will only provide
11 labor fee reimbursement for one consultant from any applicable firm, unless otherwise
12 specifically approved by the Contracting Officer of the City Council. Contractor further
13 agrees to avoid the unnecessary duplication of personnel and costs in the performance of
14 services under this agreement and accordingly, shall staff all assignments with only qualified
15 and experienced personnel so as to only charge for the minimum number of personnel and
16 incur the least costs reasonably necessary to perform the assignments.

1 **XIX. SEVERABILITY:**

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

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

8 **IN WITNESS WHEREOF:**

9 ATTEST

CITY COUNCIL

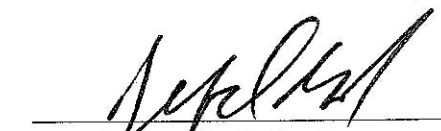
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14 Arnie Fielkow
City Council President

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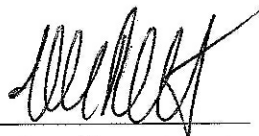
16 Jeffery S. Gulin, Esq.

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19 By: Jeffery S. Gulin, Esq.
Hearing Officer

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21

3305 Keyser Road
Baltimore, MD 21208

22 Approved: 
23 Law Department
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