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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 2012, by and between the Council of the City of New Orleans, represented by Jacquelyn B. Clarkson, 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  
3 45; and

4           **WHEREAS**, the Council by Motion M-12-135 authorized the President of the Council  
5 to 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  
12 regulatory proceedings pursuant to Article III of Chapter 158 of the Code of the  
13 City of New Orleans. Assignments of responsibility for proceedings are to be  
14 made directly by the City Council or through the Council Utilities Regulatory  
15 Office.

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

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

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

2                   1.    Provide contract administration through the City Council Utilities  
3                   Regulatory    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  
6                   Council 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  
10          expenses incurred.  The billing rate for professional services shall be \$400.00 per hour.  
11          If there any necessary and ordinary expenses attached to the work of Jeffrey S. Gulin.  
12          These expenses, in addition to the fees shall not exceed Fifteen Thousand Five Dollars  
13          (\$15,000.00).  Jeffrey S. Gulin shall submit to the City a detailed monthly invoice for  
14          payment of services provided.  This agreement is contingent upon the appropriation and  
15          allocation of funds by the City of New Orleans.

16   **III.   PAYMENT**

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

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

10 **IV. EQUAL EMPLOYMENT OPPORTUNITY:**

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

1 ancestry.

2 **V. ASSIGNABILITY:**

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

5 **VI. CONFLICT OF INTEREST:**

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

15 **VII. INDEMNIFICATION:**

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

1 performance of its obligation under this Agreement.

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

3 **COVERAGE:**

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

12 **IX. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT**

13 **COMPENSATION COVERAGE:**

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

19 A. The Contractor has been and will be free from any control or  
20 direction by the City, over the performance of the services covered  
21 by this contract; and

22 B. Service(s) to be rendered by the Contractor are outside the normal  
23 course and scope of the City's usual business; and

1 C. The Contractor has been independently engaged in performing  
2 services listed herein prior to the date of this contract.

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

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

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

12 **XI. JURISDICTION:**

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

16 **XII. DURATION OF AGREEMENT:**

17 The services to be provided under the terms of this Agreement shall begin on  
18 January 1, 2012 and shall end no later than December 31, 2012. It is understood and  
19 acknowledged by all signators to this agreement that work described under these terms is  
20 to be accomplished during the time period specified herein. The terms, conditions and/or  
21 duration of this contract may be modified by an executed, written amendment to this  
22 contract.

23 **XIII. CANCELLATION:**

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

4   **XIV. SOLICITATION:**

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

10 **XV. OFFICE OF INSPECTOR GENERAL**

11           It is agreed that the contractor or applicant will abide by all provisions of City Code §2-  
12           1120, including but not limited to City Code §2-1120(12) (as adopted by Ordinance No.  
13           22, 888 M.C.S.), which requires the contractor to provide the Office of Inspector General  
14           with documents and information as requested. Failure to comply with such requests shall  
15           constitute a material breach of the contract. In signing this contract, the contractor agrees  
16           that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes  
17           of challenging a subpoena.

18 **XVI. SUBCONTRACTS:**

19           Any and all subcontracts by the Contractor relating to work under this contract shall be  
20           approved in advance by motion of the Council. The Council may require information on  
21           ownership interests in the subcontractor prior to approval of the subcontractor's retention.  
22           Contractor shall incorporate by reference in all subcontracts the provisions of this Article  
23           and shall require all subcontractors to comply with such provisions. Contractor's failure

1 to comply with the obligations in this subsection shall constitute a material breach of this  
2 Agreement.

3 **XVII. EXPENSES**

4 Unless otherwise approved by the Contracting Officer of the City Council, reimbursable  
5 expenses shall be limited as follows: meals at reasonable and customary costs for the city  
6 in which they are consumed absent charges for alcoholic beverages, air transportation  
7 limited to lowest available coach fares at the time of booking, lodging expenses in New  
8 Orleans not to exceed federal per diem rate for hotels in New Orleans to the extent  
9 achievable without an official governmental identification for the personnel; postage,  
10 overnight delivery or courier services at contractor's actual cost; facsimile transmissions  
11 and long distance telephone charges at contractor's actual cost; copies at \$0.10 per page;  
12 computerized research at contractor's actual cost.

13 **XVIII. LIMITATIONS**

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

1 **XIX. CONVICTED FELON PROVISION**

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

7 **XX. OWNERSHIP INTEREST PROVISION**

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9 The Contractor shall provide a sworn affidavit listing all persons, natural or artificial,  
10 with an ownership interest in the Contractor and stating that no other person holds an  
11 ownership interest in the contractor via a counter letter. For the purposes hereof, an  
12 "ownership interest" shall not be deemed to include ownership of stock in a publicly  
13 traded corporation or ownership of an interest in a mutual fund or trust that holds an  
14 interest in a publicly traded corporation. If the Contractor fails to submit the required  
15 affidavits, the City may, after 30 days' written notice to the prime Contractor, take such  
16 action as may be necessary to cause the suspension of any further payments until such the  
17 required affidavits are submitted.

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1 **XXI. SEVERABILITY:**

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

8 **IN WITNESS WHEREOF:**

9 ATTEST

CITY COUNCIL

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*Jacquelyn B. Clarkson* 6/28/12  
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Jacquelyn Brechtel Clarkson  
City Council President

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Jeffery S. Gulin, Esq.

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*Coranne Gulin*  
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*[Signature]*  
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*[Signature]*  
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By: Jeffery S. Gulin, Esq.  
Hearing Officer

3302 Bridle Ridge Lane  
Lutherville, MD 21093

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Approved: *[Signature]*  
\_\_\_\_\_  
Law Department

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213-52-9712  
Federal ID Number