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**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE CITY OF NEW ORLEANS
AND
LEGEND CONSULTING GROUP LIMITED**

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") and the firm of **Legend Consulting Group Limited** (hereinafter referred to as "Contractor").

WITNESSETH

WHEREAS, to address the complex legal and technical issues necessary to properly meet its responsibility, the Council has selected hearing officers and consulting firms as advisors, in accordance with the competitive selection process required by the Home Rule Charter; and

WHEREAS, pursuant to Rule 45, the City Council adopted Motion M-11-406 on September 1, 2011, directing the Council staff to issue a Request for Qualifications to initiate a competitive selection process to obtain consultants with expertise essential to assisting the Council in effectuating its regulatory authority over electric and gas utilities in New Orleans; and

WHEREAS, a Request for Qualifications relative to electric and gas regulatory services was issued on September 23, 2011; and

WHEREAS, responses to the Request for Qualifications were reviewed by the Staff Selection Review Committee on November 16, 2011 and recommended that the Council Utility Committee give further consideration to all respondents; and

WHEREAS, the Council Utility Committee met on December 7, 2011 and

1 interviewed the respondents recommended by the Staff Selection Review Committee and
2 recommended that the response of Legend Consulting Group Limited be forwarded to the
3 full Council for consideration for contracts renewable on an annual basis for a total
4 period of up to five years; in accordance with respective responses and the Council RFQ;
5 and

6 **WHEREAS**, pursuant to Motion M-11-577 the City Council approved Legend
7 Consulting Group Limited be retained to provide electric and/or natural gas regulatory
8 consulting services for a period of up to five years is hereby approved; and

9 **WHEREAS**, pursuant to Motion M-11-577 the Council authorized the President
10 of the Council to sign a professional service contract with the firm of Legend Consulting
11 Group Limited for the contract amount as specified herein; and

12 **WHEREAS**, the firm of Legend Consulting Group Limited is herein represented
13 by Joseph A. Vumbaco, Managing Partner as authorized by letter to enter into agreement
14 on behalf of the firm of Legend Consulting Group Limited.

15 **NOW, THEREFORE**, the City of New Orleans and the firm of Legend
16 Consulting Group Limited for the consideration, and under conditions set forth, do agree
17 as follows:

18 **I. SCOPE OF SERVICES**

19 **A. Contractor Agrees To:**

20 Provide advice, counsel and representation to the City Council to provide
21 engineering and related consulting services to the Council in all local, state
22 and federal regulatory and legislative matters in respect to the electric and
23 natural gas utilities and suppliers providing services in New Orleans,
24 including but not limited to Entergy, its unregulated subsidiaries and its

1 regulated operating subsidiaries; Entergy Louisiana, Inc; and Entergy New
2 Orleans, Inc.; as may be required from time to time by the City Council, and
3 its staff.

4 B. The City Agrees To:

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

10 **II. COMPENSATION**

11 The compensation to be paid for services rendered will be at the hourly billing
12 rate of:

13	Managing Partners	\$300 - \$350
14	Executive Consultant	\$265 - \$325
15	Senior Consultants	\$225 - \$275
16	Supervising Engineer/Analyst/Economist	\$195 - \$235
17	Senior Engineer/Analyst/Economist	\$165 - \$205
18	Engineer/Analyst/Economist	\$135 - \$195
19	Executive Administrative Assistant	\$ 85- \$125

20 The compensation to be paid to the firm of Legend Consulting Group Limited for
21 such services shall not exceed One Million Nine Hundred Five Thousand
22 (\$1,905,000.00) Dollars. If there are any necessary and ordinary expenses
23 attached to the work of the firm of Legend Consulting Group Limited these
24 expenses, in addition to the fees outlined above, shall be reimbursable by the City

1 but the total amount of such expenses and fees shall not exceed One Million Nine
2 Hundred Five Thousand (\$1,905,000.00) Dollars. The firm of Legend Consulting
3 Group Limited shall submit to the City a detailed monthly invoice for payment of
4 services provided. The firm of Legend Consulting Group Limited work shall be
5 detailed in increments of one-tenth of an hour. This agreement is contingent
6 upon the appropriation and allocation of funds by the City of New Orleans.

7 **III. PAYMENT**

8 Payment under this agreement shall be made pursuant to detailed monthly
9 invoices submitted by the firm, subject to review and approval by the City for
10 payment. Upon authorization through the City Council Utilities Regulatory
11 Office such invoices may be submitted to the Finance Department for payment by
12 the City or, alternatively, when such invoices would be reimbursable by a utility
13 subject to regulation under Section 3-130 of the Home Rule Charter and
14 reimbursable pursuant to Section 3-130 (5) of the Home Rule Charter, the City
15 Council Utilities Regulatory Office may submit such invoices for payment to such
16 regulated utility company. Payments in the name of the firm under this provision
17 shall then be sent to the Council Utilities Regulatory Office which shall
18 immediately forward such authorized payment to the firm. The Council Utilities
19 Regulatory Office shall maintain records of such payments which shall be public
20 records and shall also forward copies of such records as required to the CAO and
21 Department of Finance. Such payments, when made by such utility company
22 through the City Council's Utilities Regulatory Office shall fully discharge the
23 City's obligation for such payment under this contract and be included in and
24 applied to the maximum compensation limits of this contract. Pursuant to Motion

1 M-11-577 such payments shall be recoverable as regulatory expense by such
2 utility in the same manner as reimbursements to the City for such payments
3 pursuant to Section 3-130 (5) of the Home Rule Charter.

4 **IV. EQUAL EMPLOYMENT OPPORTUNITY**

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

20 **V. ASSIGNABILITY**

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

24 **VI. CONFLICT OF INTEREST**

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

11 **VII. INDEMNIFICATION**

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

22 **VIII. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S**
23 **COMPENSATION COVERAGE**

24 The Contractor herein expressly agrees and acknowledges that it is an

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

8 **IX. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT**
9 **COMPENSATION COVERAGE**

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

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

24 Consequently, neither the Contractor nor anyone employed by the

1 Contractor shall be considered an employee of the City for the purpose of
2 unemployment compensation coverage, the same being hereby expressly
3 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
6 this professional services contract that the Contractor, acting as an
7 independent agent, and its agents assigned and employees shall not receive
8 any sick and annual leave benefits from the City of New Orleans.

9 **XI. JURISDICTION**

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

14 **XII. DURATION OF AGREEMENT**

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

21 **XIII. EXTENSION**

22 This agreement may be extended at the option of the City, provided that funds are
23 allocated by the Council of the City of New Orleans and the extensions of the
24 agreement facilitate the continuity of services provided herein. This agreement

1 may be approved for the negotiation of one year contracts renewable on an annual
2 basis for a total period of up to five years.

3 **XIV. CANCELLATION**

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

8 **XV. SOLICITATION**

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

14 **XVI. OFFICE OF INSPECTOR GENERAL**

15 It is agreed that the contractor or applicant will abide by all provisions of City
16 Code §2-1120, including but not limited to City Code §2-1120(12), which
17 requires the contractor to provide the Office of Inspector General with documents
18 and information as requested. Failure to comply with such requests shall
19 constitute a material breach of the contract. In signing this contract, the
20 contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil
21 District Court for purposes of challenging a subpoena.

22 **XVII. OWNERSHIP INTEREST**

23 The Contractor shall provide a sworn affidavit listing all persons, natural or
24 artificial, with an ownership interest in the Contractor and stating that no other

1 person holds an ownership interest in the contractor via a counter letter. For the
2 purposes hereof, an "ownership interest" shall not be deemed to include
3 ownership of stock in a publicly traded corporation or ownership of an interest in
4 a mutual fund or trust that holds an interest in a publicly traded corporation. If the
5 Contractor fails to submit the required affidavits, the City may, after 30 days'
6 written notice to the prime Contractor, take such action as may be necessary to
7 cause the suspension of any further payments until such the required affidavits are
8 submitted.

9 **XVIII. SUBCONTRACTOR REPORTING**

10
11 The Contractor shall provide a list of all persons, natural or artificial, who are
12 retained by the Contractor at the time of the contract's execution and who are
13 expected to perform work as subcontractors in connection with the Contractor's
14 work for the city. In regard to any subcontractor proposed to be retained by the
15 Contractor to perform work on the contract with the city, the Contractor must
16 provide notice to the city within 30 days of retaining said subcontractor. If the
17 Contractor fails to submit the required lists and notices, the City may, after 30
18 days' written notice to the prime Contractor, take such action as may be necessary
19 to cause the suspension of any further payments until such the required lists and
20 notices are submitted.

21 **XIX. EXPENSES**

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

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

7 **XX. LIMITATIONS**

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

19 **XXI. SEVERABILITY**

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

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

3 **IN WITNESS WHEREOF:**

4 ATTEST

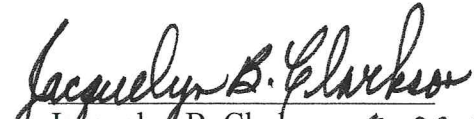
CITY COUNCIL

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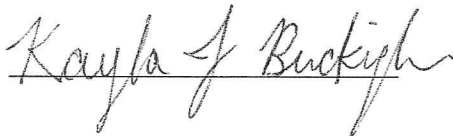

Jacquelyn B. Clarkson 3-29-12
City Council President

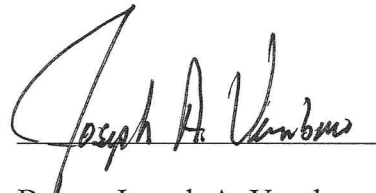
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Legend Consulting Group Limited

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By: Joseph A. Vumbaco
President
8055 East Tufts Avenue
Suite 1250
Denver, Colorado 80237-2835

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Approved:



Law Department

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