

K12-184

1                                   **AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN**  
2                                   **THE CITY OF NEW ORLEANS**  
3                                   **AND**  
4                                   **WILKERSON & ASSOCIATES, PLC.**

5           **THIS AGREEMENT** is made and entered into as of the 1st day of January 2012 by  
6 and between the Council of the City of New Orleans, represented by Jacquelyn B. Clarkson,  
7 President of the Council (hereinafter referred to as "City") and the firm of **Wilkerson &**  
8 **Associates, PLC** (hereinafter referred to as "Contractor").

9                                   **WITNESSETH**

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

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

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

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

24           **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 Wilkerson & Associates, PLC be forwarded to the full  
3 Council for consideration for contracts renewable on an annual basis for a total period of  
4 up to five years; in accordance with respective responses and the Council RFQ; and

5 **WHEREAS**, pursuant to Motion M-11-573 the City Council approved Wilkerson  
6 & Associates be retained as special counsel to the City Council to provide electric and/or  
7 natural gas regulatory consulting services for a period of up to five years is hereby  
8 approved; and

9 **WHEREAS**, pursuant to Motion M-11-573 the Council authorized the President  
10 of the Council to sign a professional service contract with the firm of Wilkerson &  
11 Associates, PLC for the contract amount as specified herein; and

12 **WHEREAS**, the firm of Wilkerson & Associates, PLC is herein represented by  
13 Walter J. Wilkerson, Managing Partner as authorized by letter to enter into agreement on  
14 behalf of the firm of Wilkerson & Associates, PLC.

15 **NOW, THEREFORE**, the City of New Orleans and the firm of Wilkerson &  
16 Associates, PLC for the consideration, and under conditions set forth, do agree as  
17 follows:

18 **I. SCOPE OF SERVICES**

19 **A. Contractor Agrees To:**

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

1 subsidiaries and its regulated operating subsidiaries; Entergy Louisiana, Inc;  
2 and Entergy New Orleans, Inc.; as may be required from time to time by the  
3 City Council, and 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 Partners	\$320.00 per hour
14 Associates	\$150.00 per hour
15 Paralegals	\$ 90.00 per hour

16 The compensation to be paid to the firm of Wilkerson & Associates, PLC for such  
17 services shall not exceed Eight Hundred Seven Thousand (\$807,000.00) Dollars.  
18 If there are any necessary and ordinary expenses attached to the work of the firm  
19 of Wilkerson & Associates, PLC these expenses, in addition to the fees outlined  
20 above, shall be reimbursable by the City but the total amount of such expenses  
21 and fees shall not exceed Eight Hundred Seven Thousand (\$807,000.00) Dollars.  
22 The firm of Wilkerson & Associates, PLC shall submit to the City a detailed  
23 monthly invoice for payment of services provided. The firm of Wilkerson &  
24 Associates, PLC work shall be detailed in increments of one-tenth of an hour .

1 This agreement is contingent upon the appropriation and allocation of funds by  
2 the City of New Orleans.

3 **III. PAYMENT**

4 Payment under this agreement shall be made pursuant to detailed monthly  
5 invoices submitted by the firm, subject to review and approval by the City for  
6 payment. Upon authorization through the City Council Utilities Regulatory  
7 Office such invoices may be submitted to the Finance Department for payment by  
8 the City or, alternatively, when such invoices would be reimbursable by a utility  
9 subject to regulation under Section 3-130 of the Home Rule Charter and  
10 reimbursable pursuant to Section 3-130 (5) of the Home Rule Charter, the City  
11 Council Utilities Regulatory Office may submit such invoices for payment to such  
12 regulated utility company. Payments in the name of the firm under this provision  
13 shall then be sent to the Council Utilities Regulatory Office which shall  
14 immediately forward such authorized payment to the firm. The Council Utilities  
15 Regulatory Office shall maintain records of such payments which shall be public  
16 records and shall also forward copies of such records as required to the CAO and  
17 Department of Finance. Such payments, when made by such utility company  
18 through the City Council's Utilities Regulatory Office shall fully discharge the  
19 City's obligation for such payment under this contract and be included in and  
20 applied to the maximum compensation limits of this contract. Pursuant to Motion  
21 M-11-573 such payments shall be recoverable as regulatory expense by such  
22 utility in the same manner as reimbursements to the City for such payments  
23 pursuant to Section 3-130 (5) of the Home Rule Charter.

24 **IV. EQUAL EMPLOYMENT OPPORTUNITY**

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

16 **V. ASSIGNABILITY**

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

20 **VI. CONFLICT OF INTEREST**

21 In the interest of ensuring that efforts of the Contractor do not conflict with the  
22 interest of the City, and in recognition of Contractor's professional responsibility  
23 to the City, the Contractor agrees to decline any offer of employment if its  
24 independent, professional work on behalf of the City is likely to be adversely

1 affected by the acceptance of such employment. The initial determination of such  
2 a possibility rests with the Contractor. It is incumbent upon the Contractor to  
3 notify the City and provide full disclosure of the possible effects of such  
4 employment on the Contractor's independent, professional work in behalf of the  
5 City. Final decision on any disputed offers of other employment for the  
6 Contractor shall rest with the City.

7 **VII. INDEMNIFICATION**

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

18 **VIII. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S**  
19 **COMPENSATION COVERAGE**

20 The Contractor herein expressly agrees and acknowledges that it is an  
21 independent Contractor as defined in R. S. 23:1021 (6) and as such, it is expressly  
22 agreed and understood between the parties hereto, in entering into this  
23 professional services contract, that the City of New Orleans shall not be liable to  
24 the Contractor for any benefits or coverage as provided by the Worker's

1 Compensation Law of the State of Louisiana, and further, under the provisions of  
2 R.S. 23:1034 anyone employed by the Contractor shall not be considered an  
3 employee of the City for the purpose of Worker's Compensation Coverage.

4 **IX. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT**  
5 **COMPENSATION COVERAGE**

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

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

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

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

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

24 **X. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS**

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

5 **XI. JURISDICTION**

6 The undersigned Contractor does further hereby consent and yield to the  
7 jurisdiction of the State Civil Courts of the Parish of Orleans and does hereby  
8 formally waive any pleas of jurisdiction on account of residence elsewhere of the  
9 undersigned Contractor.

10 **XII. DURATION OF AGREEMENT**

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

17 **XIII. EXTENSION**

18 This agreement may be extended at the option of the City, provided that funds are  
19 allocated by the Council of the City of New Orleans and the extensions of the  
20 agreement facilitate the continuity of services provided herein. This agreement  
21 may be approved for the negotiation of one year contracts renewable on an annual  
22 basis for a total period of up to five years.

23 **XIV. CANCELLATION**

24 Either party of this contract may terminate the contract at any time during



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

4 **XV. SOLICITATION**

5 The Contractor has not employed or retained any company or person, other than a  
6 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  
8 bona fide employee working for him, any fee, commission, percentage, gift, or  
9 any other or consideration contingent upon or resulting from the subject contract.

10 **XVI. OFFICE OF INSPECTOR GENERAL**

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

18 **XVII. OWNERSHIP INTEREST**

19 The Contractor shall provide a sworn affidavit listing all persons, natural or  
20 artificial, with an ownership interest in the Contractor and stating that no other  
21 person holds an ownership interest in the contractor via a counter letter. For the  
22 purposes hereof, an "ownership interest" shall not be deemed to include  
23 ownership of stock in a publicly traded corporation or ownership of an interest in  
24 a mutual fund or trust that holds an interest in a publicly traded corporation. If the

1 Contractor fails to submit the required affidavits, the City may, after 30 days'  
2 written notice to the prime Contractor, take such action as may be necessary to  
3 cause the suspension of any further payments until such the required affidavits are  
4 submitted.

5 **XVIII. SUBCONTRACTOR REPORTING**

6  
7 The Contractor shall provide a list of all persons, natural or artificial, who are  
8 retained by the Contractor at the time of the contract's execution and who are  
9 expected to perform work as subcontractors in connection with the Contractor's  
10 work for the city. In regard to any subcontractor proposed to be retained by the  
11 Contractor to perform work on the contract with the city, the Contractor must  
12 provide notice to the city within 30 days of retaining said subcontractor. If the  
13 Contractor fails to submit the required lists and notices, the City may, after 30  
14 days' written notice to the prime Contractor, take such action as may be necessary  
15 to cause the suspension of any further payments until such the required lists and  
16 notices are submitted.

17 **XIX. EXPENSES**

18 Unless otherwise approved by the Contracting Officer of the City Council,  
19 reimbursable expenses shall be limited as follows: meals at reasonable and  
20 customary costs for the city in which they are consumed absent charges for  
21 alcoholic beverages, air transportation limited to lowest available coach fares at  
22 the time of booking, lodging expenses in New Orleans not to exceed federal per  
23 diem rate for hotels in New Orleans to the extent achievable without an official  
24 governmental identification for the personnel; postage, overnight delivery or  
25 courier services at contractor's actual cost; facsimile transmissions and long

1 distance telephone charges at contractor's actual cost; copies at \$0.10 per page;  
2 computerized research at contractor's actual cost.

3 **XX. LIMITATIONS**

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

15

1 **XXI. SEVERABILITY**

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

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

9 **IN WITNESS WHEREOF:**

10 ATTEST

CITY COUNCIL

11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_

*Jacquelyn B. Clarkson*  
Jacquelyn B. Clarkson 3/19/12  
City Council President

15 *Cheryl J. Moore*  
16 \_\_\_\_\_  
Cheryl J. Moore

Wilkerson & Associates, PLC

17 *Kelley R. Bazile*  
18 \_\_\_\_\_  
Kelley R. Bazile

*Walter J. Wilkerson*  
By: Walter J. Wilkerson, Esq.  
Managing Partner  
650 Poydras Street  
Suite 1913  
New Orleans, LA 70130

23 27-4427044

24 Approved: \_\_\_\_\_  
25 *[Signature]*  
26 **FORM APPROVED:**  
27 **City Attorney**  
**Law Department, City of New Orleans**