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**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE CITY OF NEW ORLEANS
AND
WILKERSON & HENRY, L.L.C.**

THIS AGREEMENT is made and entered into as of the 1st day of January 2010 by and between the Council of the City of New Orleans, represented by Arnie Fielkow, President of the Council (hereinafter referred to as "City") and the firm of **Wilkerson & Henry, L.L.C.** (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-09-459, 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 4, 2009 and reissued on October 20, 2009; and

WHEREAS, responses to the Request for Qualifications were reviewed by the Staff Selection Review Committee on October 20, 2009 and on November 9, 2009, the Council Utility Committee met and recommended that the City Council approved the selection of Sonnenschein Nath & Rosenthal, L.L.P., Wilkerson & Henry, L.L.C., Legend Consulting Group Limited, Bruno and Tervalon, L.L.P., and Paillet, Meunier & LeBlanc, L.L.P. be

1 retained to provide electric and/or natural gas regulatory consulting services to the City
2 Council; and

3 **WHEREAS**, by Motion M-09-645 the City Council approved the recommendation of
4 the Council Utilities Committee that the firm of Wilkerson & Henry be retained to provide
5 utility consulting services in the area of the Council's electric and gas regulatory
6 responsibility; and

7 **WHEREAS**, the Council by Motion M-09-673 authorized the President of the
8 Council to sign a professional service contract with the firm of Wilkerson & Henry for the
9 contract amount as specified herein; and

10 **WHEREAS**, the firm of Wilkerson & Henry is herein represented by Walter J.
11 Wilkerson, Managing Partner as authorized by letter to enter into agreement on behalf of the
12 firm of Wilkerson & Henry.

13 **NOW, THEREFORE**, the City of New Orleans and the firm of Wilkerson & Henry
14 for the consideration, and under conditions set forth, do agree as follows:

15 **I. SCOPE OF SERVICES**

16 **A. Contractor Agrees To:**

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

1 Orleans, Inc.; as may be required from time to time by the City Council, and its
2 staff.

3 B. The City Agrees To:

4 1. Provide contract administration through the City Council
5 Utilities Regulatory Office.

6 2. Provide access to records, documents and other information as may
7 be required. Additional support and information may be directed to
8 the Council Utilities Regulatory Office.

9 **II. COMPENSATION**

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

12 Partners	up to \$275.00 per hour
13 Associates	up to \$225.00 per hour
14 Other Professionals	up to \$ 75.00 per hour

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

1 appropriation and allocation of funds by the City of New Orleans.

2 **III. PAYMENT**

3 Payment under this agreement shall be made pursuant to detailed monthly invoices
4 submitted by the firm, subject to review and approval by the City for payment. Upon
5 authorization through the City Council Utilities Regulatory Office such invoices may
6 be submitted to the Finance Department for payment by the City or, alternatively,
7 when such invoices would be reimbursable by a utility subject to regulation under
8 Section 3-130 of the Home Rule Charter and reimbursable pursuant to Section 3-130
9 (5) of the Home Rule Charter, the City Council Utilities Regulatory Office may
10 submit such invoices for payment to such regulated utility company. Payments in the
11 name of the firm under this provision shall then be sent to the Council Utilities
12 Regulatory Office which shall immediately forward such authorized payment to the
13 firm. The Council Utilities Regulatory Office shall maintain records of such
14 payments which shall be public records and shall also forward copies of such records
15 as required to the CAO and Department of Finance. Such payments, when made by
16 such utility company through the City Council's Utilities Regulatory Office shall
17 fully discharge the City's obligation for such payment under this contract and be
18 included in and applied to the maximum compensation limits of this contract.
19 Pursuant to Motion M-09-673 such payments shall be recoverable as regulatory
20 expense by such utility in the same manner as reimbursements to the City for such
21 payments pursuant to Section 3-130 (5) of the Home Rule Charter.

22 **IV. EQUAL EMPLOYMENT OPPORTUNITY**

23 In all hiring or employment made possible by or resulting from this Contract, there

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

14 **V. ASSIGNABILITY**

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

18 **VI. CONFLICT OF INTEREST**

19 In the interest of ensuring that efforts of the Contractor do not conflict with the
20 interest of the City, and in recognition of Contractor's professional responsibility to
21 the City, the Contractor agrees to decline any offer of employment if its independent,
22 professional work on behalf of the City is likely to be adversely affected by the
23 acceptance of such employment. The initial determination of such a possibility rests

1 with the Contractor. It is incumbent upon the Contractor to notify the City and
2 provide full disclosure of the possible effects of such employment on the
3 Contractor's independent, professional work in behalf of the City. Final decision on
4 any disputed offers of other employment for the Contractor shall rest with the City.

5 **VII. INDEMNIFICATION**

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

15 **VIII. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION**
16 **COVERAGE**

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

1 Worker's Compensation Coverage.

2 **IX. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT**

3 **COMPENSATION COVERAGE**

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

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

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

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

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

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

23 It is expressly agreed to and understood between the parties entering into this

1 professional services contract that the Contractor, acting as an independent
2 agent, and its agents assigned and employees shall not receive any sick and
3 annual leave benefits from the City of New Orleans.

4 **XI. JURISDICTION**

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

9 **XII. DURATION OF AGREEMENT**

10 The services to be provided under the terms of this Agreement shall begin on January
11 1, 2010 and shall end no later than December 31, 2010. It is understood and
12 acknowledged by all signators to this Agreement that work described under these
13 terms is to be accomplished during the time period specified herein. The terms,
14 conditions and duration of this contract may be modified by an executed, written
15 amendment to this contract.

16 **XIII. EXTENSION**

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

22 **XIV. CANCELLATION**

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

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

3 **XV. SOLICITATION**

4 The Contractor has not employed or retained any company or person, other than a
5 bona fide employee working solely for him, to solicit or secure the subject contract.

6 The Contractor has not paid or agreed to pay any person, other than a bona fide
7 employee working from him, any fee, commission, percentage, gift, or any other or
8 consideration contingent upon or resulting from the subject contract.

9 **XVI. OFFICE OF INSPECTOR GENERAL**

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

14 **XVII. SUBCONTRACTS**

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

22 **XVIII. EXPENSES**

23 Unless otherwise approved by the Contracting Officer of the City Council,

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

10 **XIX. LIMITATIONS**

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

**MOTION
(AS AMENDED)
NO. M-09-673**

CITY HALL: DECEMBER 7, 2009

BY: COUNCILMEMBERS CARTER, HEDGE-MORRELL AND WILLARD-LEWIS

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, to address the complex legal and technical issues necessary to properly meet its responsibility, the Council has selected consulting firms as advisors, in accordance with the competitive selection process required by the Home Rule Charter and established by Council Rule 45; and

WHEREAS, by Motion M-09-645, after competitive selection, the City Council authorized retention of the Law Firm of Wilkerson and Henry, LLC to continue to act as special counsel to the City Council in electric and gas utility regulatory matters; and

WHEREAS, by Motion M-09-645 and the terms of the Request For Qualifications issued on September 4, 2009 and reissued on October 20, 2009, the Council is authorized to enter into a contract with the Law Firm of Wilkerson and Henry, LLC to act as special counsel to the City Council in electric and gas utility regulatory matters renewable on an annual basis for a total period of up to two years; and

WHEREAS, by Motion M-09-645 the Council further authorized negotiation of contracts with a scope of work consistent with the request for qualifications and the Council's electric and gas Utility regulatory needs with each of the firms to be retained by the Council; and

WHEREAS, Wilkerson & Henry has had a leading role in developing the process and procedural instruments that the Council has adopted to consider ENO's rate case applications; and

WHEREAS, Wilkerson & Henry has many years of rate regulatory experience and will have a significant role in litigating ENO rate cases, including a review of the record, conducting discovery, preparation and cross-examination of witnesses in depositions, participating in a hearing before the City Council's designated Hearing Officer, participating in any settlement discussions, and development and preparation of final rate Orders; and

WHEREAS, Wilkerson & Henry is very familiar with the Entergy Operating Companies and the agreement (System Agreement) that controls their relationship, and this knowledge and experience will be beneficial to the Council as it considers its System Agreement options in light of Entergy Arkansas and Entergy Mississippi's notice to the remaining operating companies of their intention to leave the System; and

WHEREAS, Wilkerson & Henry was instrumental in developing the existing least cost integrated resource plan ("LCIRP"), and Wilkerson & Henry will assist the Council in its consideration of the integrated resource plan ("IRP") proposal to be filed by ENO pursuant to Resolution R-08-295; and

WHEREAS, Wilkerson & Henry was instrumental in developing the Energy Smart structure and will provide important guidance in the further development of the Energy Smart program, including working with ENO and the Council to develop criteria for the selection of the Independent Monitor and Third Party Administrator; and

WHEREAS, Wilkerson & Henry continues to have a lead role in ENO's Hurricanes Katrina/Rita storm costs certification process, which has netted ENO for the benefit of New Orleans ratepayers approximately \$180 million to date; and

WHEREAS, Wilkerson & Henry continues to monitor the ENO Gas Rebuild Plan to assure the plan is consistent with the Council's orders, prudence, and the long-term interest of ratepayers; and

WHEREAS, Wilkerson & Henry has been local legal counsel for the Council for many years, and part of its role is to monitor regulatory issues generally as they develop; and

WHEREAS, in approving a contract the New Orleans City Council is conscious of its responsibility to pursue its regulatory responsibility over gas and electric utilities in a cost-effective manner which nonetheless does not compromise the interests of ratepayers in the high stakes proceedings and others matters which the Council must address on behalf of the City and its ratepayers; and

WHEREAS, given the continuing needs of this Council relative to its regulatory responsibility the Council desires to authorize an appropriate contract with the Law Firm of Wilkerson & Henry to assist in meeting the Council's regulatory responsibility to the City and its ratepayers; now, therefore

BE IT MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, that the President is also requested and authorized to sign a new contract with the Law Firm of Wilkerson and Henry, LLC to serve as special counsel to the City Council for a maximum compensation under such contract up to Eight Hundred Seven Thousand Dollars (\$807,000.00).

BE IT FURTHER MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, that the contract shall add a statement that pursuant to Chapter 2, Article XVIII of the City Code relative to the office of Inspector General that the contractor understands and will abide by all provisions of that Chapter.

BE IT FURTHER MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS,
that such contract may include provisions allowing the option of direct payment of invoices by utilities regulated by the Council pursuant to Section 3-130 of the Home Rule Charter, provided such payments have been approved by the City, after the City's review and forwarding of such invoices for payment, and further that such invoices, if paid by the City, would be reimbursable by such utility pursuant to Section 3-130 (5) of the Home Rule charter. Such payments shall be recoverable as a regulatory expense by such utility in the same manner as reimbursements to the City for such payments.

BE IT FURTHER MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS,
that the contract 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, Head, Hedge-Morrell, Midura, Willard-Lewis - 7

NAYS: Midura - 1

ABSENT: Head (Temporarily Out of Chamber) - 1

RECUSED: Fielkow - 1

AND THE MOTION, AS AMENDED, WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY


CLERK OF COUNCIL