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

THIS AGREEMENT is made and entered into as of the 1st day of January 2009 by and between the Council of the City of New Orleans, represented by Jacquelyn Brechtel Clarkson, President of the Council (hereinafter referred to as "City") and the firm of **Wilkerson and 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 Wilkerson and Henry, L.L.C., in accordance with the competitive selection process required by the Home Rule Charter; and

WHEREAS, pursuant to Motions M-04-803 the City Council approved the recommendation of the Council Utilities Committee that the firm of Wilkerson and Henry be retained to provide utility consulting services in the area of the Council's electric and gas regulatory responsibility; and

WHEREAS, the Council desires to authorize a contract amendment and extension with Wilkerson and Henry, L.L.C. to assist in meeting the Council's regulatory responsibility to the City and its ratepayers; and

**MOTION
M-08727**

CITY HALL: DECEMBER 18, 2008

**BY: COUNCILMEMBERS MIDURA, 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-04-803, 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-04-803 and the terms of the Request For Qualifications issued on June 11, 2004, the Council is authorized to renew and extend its existing 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; and

WHEREAS, by Motion M-04-803 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 current rate case application; and

WHEREAS, Wilkerson & Henry has many years of rate regulatory experience and will have a significant role in litigating the ENO rate case 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 a final rate Order; 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, pursuant to Resolution R-08-366, the Advisors are to submit to the Council recommendations with respect to its energy efficiency proposal, particularly with respect to the Energy Smart structure, and Wilkerson & Henry will assist in developing those recommendations; and

WHEREAS, Wilkerson & Henry successfully argued the appeal of the Council's Order in *Gordon v. ENO, et al.* before the Civil District Court, in which the court agreed with the Council and rejected plaintiffs' claims that tens of millions of dollars had been improperly flowed through the ENO fuel adjustment clause, and that case has now reached the Louisiana Supreme Court and is expected to be argued in early 2009 and, Wilkerson & Henry is currently preparing that case for argument; 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 these contract extensions and amendments, 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, prior to the commencement of the 2009 RFQ process the Council fully intends to undertake a thorough analysis of the allocation of its utility regulation resources to ensure that these resources are used in a cost-effective manner that protects the interest of rate payers; and

WHEREAS, the Council will evaluate and incorporate recommendations of such analysis into the 2009 RFQ process, as appropriate; and

WHEREAS, given the continuing needs of this Council relative to its regulatory responsibility the Council desires to authorize an appropriate contract and/or contract amendment(s) with the Law Firm of Wilkerson and Henry , LLC 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 of the Council is hereby requested and authorized to sign a contract amendment with the Law Firm of Wilkerson and Henry, LLC extending the contract through 2009 and increasing the maximum compensation under such contract up to \$600,000.00.

BE IT FURTHER MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, that the contract amendment shall add a statement that pursuant to Chapter 2, Article XVIII of the City Code relative to the office of Inspector General that the contract 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 the 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 and/or contract amendment(s) 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, Midura, Willard-Lewis - 5

NAYS: 0

ABSENT: Head, Hedge-Morre11 - 2

AND THE MOTION WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY


CLERK OF COUNCIL