

RESOLUTION NO. 06-272

**A RESOLUTION AS IT PERTAINS TO LEGAL SERVICES  
AND EXPERTS IN THE ENTERGY LITIGATION**

**WHEREAS**, Resolution No. 06-157 authorized the retention of Dan Lawton as it pertains to the litigation of the City vs. Entergy; and,

**WHEREAS**, it is deemed in the best interests of the citizens to enter into an agreement as to legal services and experts as it pertains to the litigation of the City vs. Entergy.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR, TEXAS:**

**Section 1.** That the facts and opinions in the preamble are true and correct.

**Section 2.** The City Manager is herein authorized to enter into an Agreement for legal services and for experts in the Entergy litigation, in substantially the same form as attached hereto as Exhibit "A".

**Section 3.** That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

**READ, ADOPTED AND APPROVED** on this 18<sup>th</sup> day of

July, A.D., 2006, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES: Mayor Ortiz; Mayor Pro Tem Prince,  
Councilmembers Lewis Henderson,  
Flood and Sinegal

NOES: None

Rosario A. Ortiz  
MAYOR

**ATTEST:**

Evangelina Green  
CITY SECRETARY

**APPROVED AS TO FORM:**

Mark Sobolow  
CITY ATTORNEY

**APPROVED FOR ADMINISTRATION:**

M. F. M.  
CITY MANAGER

APPROVED AS TO THE AVAILIABILITY OF FUNDS

\_\_\_\_\_  
DIRECTOR OF FINANCE

# **EXHIBIT "A"**

**AGREEMENT BETWEEN THE PARKER LAW FIRM,  
AND THE CITY OF PORT ARTHUR  
REGARDING THE COLLECTION OF FRANCHISE FEES  
FROM GULF STATES AND/OR ENTERGY**

**WHEREAS**, on or about July 1999, Mark Sokolow, the City Attorney, filed an Intervention in the lawsuit of the City of Nederland, et al. vs. Entergy Gulf States, Cause No. E-159,725; and,

**WHEREAS**, on April 29, 2000, the City of Port Arthur retained John M. O'Quinn, P.C., to represent the City of Port Arthur in the Intervention that was filed in Cause No. E-159,725, with such Agreement being attached as Exhibit "A"; and,

**WHEREAS**, it was contemplated that John M. O'Quinn, P. C., would work with Mark Sokolow, the City Attorney, in the prosecution of the interests of the City of Port Arthur; and,

**WHEREAS**, John M. O'Quinn, P.C., withdrew from this case on or about November 13, 2002, citing the departure of Benjamin Hall in 2001 from the firm, and that "...No other attorney at the firm has the time or the expertise in matters of municipal ordinance and utility fees to properly pursue this case...", as denoted in Exhibit "B"; and,

**WHEREAS**, on or about April 25, 2006, the City of Port Arthur retained Dan Lawton, The Lawton Law Firm, to assist the City on this matter due to his experience with the rates and expenses of Entergy; and,

**WHEREAS**, the hourly rate of the Lawton Law Firm is \$175 per hour for Dan Lawton, and \$140 per hour for Stephen Mack and Amy Kovak; and,

**WHEREAS**, the Lawton Law Firm will also be reimbursed for expert or consultant costs, which includes Gayle W. Botley and Associates, as well as, Jacob Pous (P & L Concepts, Inc.); and,

**WHEREAS**, Entergy is contesting this litigation and has retained Germer Gertz, LLP; and,

**WHEREAS**, the City of Port Arthur deems it in the best interests of the City to also retain the Parker Law Firm for its litigation team during the pretrial proceedings; and,

**WHEREAS**, the expert report of Gayle W. Botley and Associates, as well as Jack Pous, indicates that Entergy owes the City of Port Arthur \$2,623,076.25 (inclusive of interest for franchise fees).

**NOW, THEREFORE, IT IS AGREED** between the City of Port Arthur and the Parker Law Firm as follows:

1. Prior to trial, the Parker Law Firm will be paid on an hourly basis with reimbursement for expenses incurred, which includes copy costs at 10 cents per page, fax costs at 10 cents per page, long distance charges, hotel fees, airfare, and expert/consultant fees at cost. The hourly rate for Carl Parker shall be \$175 per hour. The City will also pay the Parker Law Firm a non-refundable retainer of \$10,000, of which the hourly payments will be drawn.

2. The attorneys will keep records as to their time and expenses, as well as details as to the work that they have performed.

3. The City of Port Arthur reserves the right to settle this case at any time in such manner as it deems in the best interest of the citizens.

4. This agreement shall be construed and controlled by Texas law with venue in Jefferson County.

5. The City of Port Arthur and the Parker Law Firm reserve the discretion to renegotiate this Agreement as to delineate additional compensation, including a contingency interest if this case proceeds to trial and the Parker Law Firm is needed therefore.

SIGNED AND AGREED TO on the \_\_\_\_\_ day of \_\_\_\_\_  
2006.

**THE PARKER LAW FIRM**

**BY:** \_\_\_\_\_

SIGNED AND AGREED TO on the \_\_\_\_\_ day of \_\_\_\_\_  
2006.

**THE CITY OF PORT ARTHUR**

**BY:** \_\_\_\_\_

# **EXHIBIT "A"**

**TO THE AGREEMENT**

FROM O'QUINN & LAKINACK Fax # 713 223-0937

(WED) 5. 3. 00 17:36 17:33 NO. 4862023912 7

04/20/00 THU 08:10 FAX 4098638124

Legal Dept.

002

RECEIVED BY ACCOUNTING

APR 20 2000

LETTER AGREEMENT RETAINING THE FIRM OF JOHN M. O'QUINN, P.C. TO REPRESENT CLIENT INTERESTS, GRANT POWER OF ATTORNEY AND CONTINGENT FEE CONTRACT REGARDING ELECTRIC UTILITY AND USE ISSUES

SCOPE

The City of Port Arthur ("City") hereby retains and employs John M. O'Quinn, P.C. ("Firm") and associated attorneys to sue for, settle and/or recover all fees, damages, claims, and compensation to which the City and Class Members, if any, may be entitled, as well as to compromise and settle all claims that the City may have against any electric utility, electric supplier, or electric provider, and all their subsidiaries, predecessors, successors, and assigns ("the Companies"), that had or have facilities, equipment, wires, uses, transmissions, or other physical or tangible appurtenances upon, on, under, above, across, through, or in the public rights of way or public property of the City or which use such facilities within the City and for which a fee is due or owing in law, contract or equity to the City and/or class members, if any. It is expressly agreed and understood that the Firm's representation is limited to representation of the City and class members, if any, relating to the supply, carrying, transmission and/or provision or use of electricity within the City and/or in the geographic location of class members, if any. Further, the Firm's representation of the City and class members, if any, is limited to the specific matters described herein and the City does not expect the Firm to pursue any other matters not specifically covered by this Agreement. However, should the Court designate Firm as additional class counsel in class action litigation, then Firm will be authorized to take all appropriate action, as required by law, ethic or good legal practice, to pursue any and all necessary matters pertaining to said class action. The Firm is hereby authorized to make appropriate appearances on behalf of the City and class members, if any, to further prosecute all needed or desired action on behalf of the City and class members, if any, in the litigation styled City of Nederland, et al. v. Entergy Gulf States, Inc., et al., presently pending in the 172nd Judicial District of Jefferson County, Texas, Cause No. E-159,725 ("Litigation"). The City agrees to serve as the class representative in the Litigation, if ever needed, with Firm representing City, with appropriate leave of court.

FEES

It is expressly understood that all fees and expenses, if any, will be paid to the Firm and associated counsel as ordered by the Court in the Litigation. The Firm will look solely to the award made by the Court, if any, to recoup expenses and/or charges and/or fees related to the prosecution, handling or other matters undertaken by the Firm in connection with the Litigation. The City and the Firm recognize that class certification and counsel status has been requested in the Litigation and that the association of the Firm is not intended to interfere with that representation. Rather, the Firm shall have the absolute right, power and authority, as permitted by the Court, to work in association with and/or in addition to or as requested



by the Court to undertake appropriate representation relating to the Litigation and/or on behalf of the City and class members, if any. The Firm is expressly authorized to take all needed and/or desired matters to represent the City and class member, if any, in the Litigation. The City expressly authorizes the Firm to have the City serve as a class representative in the Litigation.

The firm agrees to retain local counsel in Jefferson County with fees not to exceed twenty percent (20%) of those fees awarded by the Court.

#### SETTLEMENT

All settlements, if any, are to be resolved in the Litigation as part of a class action suit. The Firm, along with other class counsel, are authorized to petition the Court for appropriate relief, with the City retaining its right to examine and approve any settlement offer in consultation with class counsel and consistent with its duties as a class representative in the Litigation.

#### POWER OF ATTORNEY

The Firm is hereby granted power of attorney so that it may have full authority to prepare, sign, and file all legal instruments, pleadings, drafts, authorizations, and papers that shall be reasonably necessary to conclude this representation, including settlement and/or reducing to possession any and all monies or other things of value due to the City. Should the Litigation, once certified, be de-certified or no longer maintained as a class action, the Firm has the right to withdraw as counsel for City and class member, if any, as permitted by the Court, if necessary.

#### NO GUARANTEES

It is understood and agreed that the Firm cannot warrant or guarantee the outcome of any particular claim and the Firm has not represented to the City that City will recover all or any funds. City realizes that Firm will be investigating the law and facts applicable to its claims on a continuing basis and should the Firm learn something that in the opinion of the Firm makes it impractical for attorneys to proceed with the handling of the claims, the Firm may withdraw from further representation of City and/or class member, if any, as permitted by the Court, by sending written notice to the last known address of clients. Such notice shall not be given in such a manner or at such a time as to prejudice the rights of the City.

#### EXPENSES

All expenses incurred relating to the Litigation will be reimbursed to Firm, along with all reasonable interest that may be due and owing on advanced funds, as permitted by the Court pursuant to proper class action practices. If the Firm does not obtain a settlement or recovery for the City, then the City will not pay any fees or expenses.

#### COOPERATION

The City agrees to cooperate with the Firm at all times and comply with all reasonable requests of the Firm to facilitate this Agreement and to adequately represent class members in the Litigation. The City further agrees to provide the Firm with all requested documentation, information, records, and witnesses that will be needed to reasonably represent the interests of the City.

#### ASSOCIATED COUNSEL

The Firm may, at its own expense, use or associate other attorneys in the representation of matters covered by this Agreement. The City further understands that a number of attorneys in the Firm may represent the legal interests of the City on the matters covered by this Agreement and that no commitment is made that any particular lawyer in the Firm shall be personally undertaking representation of the City's claims. The Firm is expressly authorized to retain, associate and handle matters relating to this Agreement in association with any other law firm and/or any other attorneys that Firm may deem necessary or appropriate to prosecute the Litigation.

#### CONSTRUCTION

This Agreement shall be controlled and construed by Texas law.

#### ARBITRATION

Any disagreements, disputes, controversies, or claims arising out of or relating to this Agreement shall be resolved by binding arbitration pursuant to the Federal Arbitration Act in accordance with the Commercial Arbitration Rules then in effect with the American Arbitration Association.

#### BENEFIT OF THE PARTIES

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

#### SEVERABILITY

This Agreement shall be construed severally and if any portion shall be found to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement that are not invalid, illegal, or unenforceable and the Agreement shall be construed as though the invalid, illegal, or unenforceable provision had never been contained herein.

#### COMPLETE AGREEMENT

This letter Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any other writings or understandings or written or oral Agreements between the parties respective to the subject matter herein.

FROM O'QUINN & LAMINACK Fax # 713 723-0937

04/20/00 120 08:11 FAX 4096056

(WED) 5. 3'00 17:36 17:33 NO. 4862023912 10  
Legisl DEPT. 4005

Signed and approved this 29<sup>th</sup> day of April, 2000.

John M. O'Quinn, P.C.

[Signature]  
Benjamin L. Hall, III

The City of Port Arthur

By: [Signature]  
Authorized City Officer

Title: City Manager

Date: 4-19-00

ATTEST:

Other authorized signatures of City officials

[Signature]  
Title: City Secretary

Countersigned by:

Title: \_\_\_\_\_

APPROVED AS TO FORM:

[Signature]  
City Attorney

# **EXHIBIT "B"**

**TO THE AGREEMENT**

CAUSE NO. E-159,725

CITY OF NEDERLAND  
CITY OF PORT ARTHUR  
**Plaintiff**

VS.

ENTERGY GULF STATES  
INC., ALSO KNOWN AS GULF  
STATES UTILITIES COMPANY,  
ENTERGY, INC. AND ENTERGY  
SERVICES, INC.  
**Defendant**

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IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

172<sup>nd</sup> JUDICIAL DISTRICT

**MOTION TO WITHDRAW**

TO THE HONORABLE JUDGE OF SAID COURT:

1. Counsel for the Plaintiff, the City of Port of Arthur, moves the Court for permission to withdraw.

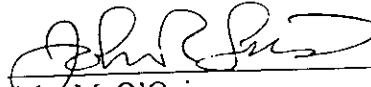
2. This case was previously handled by an attorney at the firm named Benjamin Hall. Mr. Hall left the firm in January of 2001. No other attorney at the firm has the time or the expertise in matters of municipal ordinance and utility fees to properly pursue this case.

3. Conflicts have arisen between the City of Port Arthur and the undersigned attorneys which can not be discussed with the Court without prejudicing the Plaintiff's rights.

WHEREFORE, PREMISES CONSIDERED, the undersigned attorneys request that the Court enter an order permitting the attorneys to withdraw as attorneys of record for the City of Port Arthur.

Respectfully Submitted,

**O'Quinn, Laminack & Pirtle**



John M. O'Quinn

State Bar No. 15296000

John R. Leach, III

State Bar No. 12084500

Christian Steed

State Bar No. 00792857

440 Louisiana

2300 Lyric Centre Bldg.

Houston, Texas 77002

Telephone: 713 223-1000

Facsimile: 713 222-6903

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record herein by facsimile transmission, and/or hand delivery, and/or certified mail - return receipt requested on this, the 19<sup>th</sup> day of August, 2002.



John R. Leach, III

Mr. Mark Sokolow  
City Attorney for Port Arthur  
444 4<sup>th</sup> St.  
Port Arthur, Tx. 77640

Mr. James E. Wimberly  
Attorney At Law  
3120 Central Mall Dr.  
Port Arthur, Tx. 77642

Mr. Lawrence L. Germer  
Mr. Larry Simmons  
Germer, Bernsen & Gertz, LLP  
805 Park St.  
Beaumont, Tx. 77701

CAUSE NO. E-159,725

CITY OF NEDERLAND  
CITY OF PORT ARTHUR  
**Plaintiff**

VS.

ENTERGY GULF STATES  
INC., ALSO KNOWN AS GULF  
STATES UTILITIES COMPANY,  
ENTERGY, INC. AND ENTERGY  
SERVICES, INC.

**Defendant**

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IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

172<sup>nd</sup> JUDICIAL DISTRICT

**ORDER PERMITTING O'QUINN, LAMINACK & PIRTLE  
TO WITHDRAW**

On the \_\_\_\_ day of \_\_\_\_\_, 2002, the Court considered the Motion to Withdraw filed by the firm of O'Quinn, Laminack & Pirtle and the individually attorneys, John M. O'Quinn, Christian Steed and John R. Leach, III.

The Motion to Withdraw is GRANTED. And the Court orders the Clerk to remove this law firm and the individual attorneys listed on the Court's records as attorney of record and lead counsel for the City of Port Arthur.

SIGNED AND ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
JUDGE PRESIDING

CAUSE NO. E-159,725

CITY OF NEDERLAND	§	IN THE DISTRICT COURT OF
CITY OF PORT ARTHUR	§	
Plaintiff	§	
VS.	§	
	§	
ENTERGY GULF STATES	§	JEFFERSON COUNTY, TEXAS
INC., ALSO KNOWN AS GULF	§	
STATES UTILITIES COMPANY,	§	
ENTERGY, INC. AND ENTERGY	§	
SERVICES, INC.	§	
Defendant	§	
	§	172 <sup>nd</sup> JUDICIAL DISTRICT

**ORDER**

Plaintiff's Motion to Substitute Counsel is GRANTED. The firm of O'Quinn, Laminack & Pirtle is permitted to withdraw and the Court orders that the District Clerk enter as Attorney in Charge and Lead Counsel for the City of Port Arthur, Mr. Mark Sokolow, City Attorney for the City of Port Arthur, SBN: 18824750, P.O Box 1089, Port Arthur, Texas 77641-1089, Tel. (409) 983-8115, Fax (409) 983-8291.

SIGNED AND ENTERED this 13<sup>th</sup> day of November, 2002.

JUDGE PRESIDING

**FILED**  
at 5:40 o'clock P M.

NOV 13 2002

JOHN S. APPLEMAN  
CLERK, DISTRICT COURT OF JEFFERSON CO., TEXAS  
BY K. Hughes DEPUTY