

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK TO ENTER INTO AN OPTION TO PURCHASE AGREEMENT WITH ENTERGY ARKANSAS, LLC, FOR THE PURCHASE OF APPROXIMATELY THIRTY-EIGHT (38) ACRES OF LAND BY THE CITY OF LITTLE ROCK, ARKANSAS, FOR THE BENEFIT OF THE LITTLE ROCK PORT AUTHORITY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Little Rock, Arkansas, for the use and benefit of the Little Rock Port Authority, through its 2011 Capital Sales Tax Initiative, set aside money for the specific purpose of expanding the real estate holdings of the Little Rock Port Authority; and,

WHEREAS, the Little Rock Port Authority has been actively exploring opportunities for expansion, including the development of a 2008 Master Real Estate Acquisition Plan; and,

WHEREAS, the Little Rock Port Authority Staff has worked with the Greater Little Rock Regional Chamber of Commerce, and other interested parties, to explore viable options for real estate expansion and determined that this particular parcel will meet the future needs of the Little Rock Port Authority for economic prospect recruitment purposes; and,

WHEREAS, the Little Rock Port Authority Staff has extended a preliminary offer on behalf of the City of Little Rock, based upon a third-party appraisal, to acquire an approximately 37.3-acre parcel of land located in Pulaski County, Arkansas from the owner of the land, Entergy Arkansas, LLC; and,

WHEREAS, Energy Arkansas, LLC, desires to structure the transaction through an Option to Purchase Agreement in favor of the City of Little Rock, in a form as approved by the City Attorney, a draft copy of which is attached hereto as Exhibit A; and,

WHEREAS, the Option to Purchase Agreement grants to the City of Little Rock an option to purchase all or any portion of the land, exercisable at any time prior to the expiration of the initial four (4)-year option period, which may be extended for up to two (2) consecutive additional three (3)-year periods, for a total purchase price between Six Hundred Eighty-Four Thousand Dollars (\$684,000.00) and Eight Hundred Ninety-Two Thousand, Four Hundred Thirty Dollars (\$892,430.00), plus associated closing and other transaction costs, depending upon the actual closing date and payment options set forth in Section 1 below; and,

WHEREAS, this arrangement secures a marketable piece of property for the City of Little Rock and assists with the overall acquisition strategy.

1 **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY**
2 **OF LITTLE ROCK:**

3 **Section 1.** The City of Little Rock Board of Directors authorizes the Mayor and City Clerk to enter
4 into the Option to Purchase Agreement, pursuant to which Entergy Arkansas, LLC, grants to the City of
5 Little Rock an option to purchase all or any portion of approximately 37.3 acres of land, more particularly
6 described as follows:

7 Part of the Southeast Quarter of the Northwest Quarter of Section 22, Township 1 North,
8 Range 11 West, Pulaski County, Arkansas, being more particularly described as follows:
9 Commencing at the Southeast Corner of the Southeast Quarter of the Northwest Quarter,
10 thence North 87 degrees 42 minutes 11 seconds west along the south line of the said
11 Southeast Quarter of the Northwest Quarter for a distance of 60.01 feet to the west right-
12 of-way line of Frazier Pike, said point also being the Point of Beginning of the land herein
13 described; thence continuing along said south line North 87 degrees 42 minutes 11 seconds
14 west for a distance of 1240.60 feet to a found three (3)-inch Aluminum Monument in
15 Concrete, said point being the Southwest Corner of the Southeast Quarter of the Northwest
16 Quarter; thence along the west line of the Southeast Quarter of the Northwest Quarter,
17 North 01 degree 29 minutes 26 seconds East for a distance of 1320.08 feet to the Northwest
18 Corner of the Southeast Quarter of the Northwest Quarter, thence along the north line of
19 the Southeast Quarter of the Northwest Quarter1 South 87 degrees 45 minutes 26 seconds
20 east for a distance of 1,066.22 feet to the western boundary of a tract of land as described
21 in Instrument No. 2007086608; thence along said western boundary line, South 47 degrees
22 44 minutes 00 seconds east for a distance of 230.82 feet to the western right-of-way of
23 Frazier Pike as described in Instrument No. 80-00920, thence along said right-of-way,
24 South 01 degrees 31 minutes 41 seconds west for a distance of 1,172.80 feet to the point
25 of beginning, containing 37.3 Acres, more or less, and is contingent upon positive findings
26 of the phase one environmental study, phase one archeological study, determination of
27 clear title, and the confirmation of utility access to the site.

28 **Section 2.** The consideration for the granting of the option to purchase is shown below:

- 29 a) Initial Option Period (four (4) years): Two Hundred Thirty Dollars (\$230.00) per acre,
30 payable upon execution of the Option to Purchase Agreement;
- 31 b) First Extension Period (three (3) years): Two Hundred Fifty-Eight and 87/100 Dollars
32 (\$258.87) per acre, payable upon exercise of the first extension option; and
- 33 c) Second Extension Period (three (3) years): Two Hundred Eighty-Two and 87/100 Dollars
34 (\$282.87) per acre, payable upon exercise of the second extension option.

In the event the option to purchase is properly and timely exercised, the total purchase price will be between Six Hundred Eighty-Four Thousand Dollars (\$684,000.00) and Eight Hundred Ninety-Two Thousand, Four Hundred Thirty Dollars (\$892,430.00) plus associated closing and transaction costs, depending upon the date the option is exercised, as shown below:

	<u>Option Year</u>	<u>Purchase Price per Acre</u>	<u>Cash Portion per Acre</u>
6	1	\$23,000.00	\$18,000.00
7	2	\$23,000.00	\$18,000.00
8	3	\$24,400.70	\$19,096.20
9	4	\$25,132.72	\$19,669.09
10	5	\$25,886.70	\$20,259.16
11	6	\$26,663.30	\$20,866.93
12	7	\$27,463.20	\$21,492.94
13	8	\$28,287.10	\$22,137.73
14	9	\$29,135.71	\$22,801.86
15	10	\$30,009.78	\$23,485.92

The Cash Portion of the Purchase Price will be payable to Energy Arkansas, LLC, at closing, with the balance of the Purchase Price to be donated by Entergy Arkansas, LLC. Funding will initially come from Little Rock Port Authority revenues; Little Rock Port Authority revenues will eventually be replaced by funds from the City of Little Rock’s Capital Improvement Sales Tax Account. The final acquisition of the land will come from the City of Little Rock’s Capital Improvement Sales Tax Account.

Section 3. Severability. In the event any title, section, paragraph, item, sentence, clause, phrase or word of this resolution is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the resolution which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the resolution.

Section 4. Repealer. All laws ordinances resolutions or parts of the same that are inconsistent with the provisions of this resolution are hereby repealed to the extent of such inconsistency.

APPROVED: March 5, 2019

ATTEST:

APPROVED:

Susan Langley, City Clerk

Frank Scott, Jr., Mayor

1 **APPROVED AS TO LEGAL FORM:**

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4 **Thomas M. Carpenter, City Attorney**

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Exhibit A

OPTION AGREEMENT

THIS OPTION AGREEMENT (“Agreement”) has been made and is effective as of the ____ day of _____, 2018 (the “**Effective Date**”), by and between **ENTERGY ARKANSAS, LLC, successor-in-interest to Entergy Arkansas, Inc. (“EAL”)**, and **THE CITY OF LITTLE ROCK, ARKANSAS** (the “**Option Holder**”).

RECITALS:

WHEREAS, the Option Holder has identified an approximately 37.3-acre parcel of land (the “**Land**”) located in Pulaski County, Arkansas, that is owned by EAL, as a parcel of land that is potentially suitable for economic development; and

WHEREAS, the Option Holder, together with EAL’s full cooperation and agreement, would like to qualify the Land for economic development and market the Property for sale to potential commercial development prospects (the “**Project**”); and

WHEREAS, in order to ensure that such property will be available for the Project, the Option Holder desires an option to purchase the Land in whole or in part, and EAL agrees to grant an option to the Option Holder, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, EAL and the Option Holder, intending to be legally bound, agree as follows:

ARTICLE I. OPTION TO PURCHASE

1.1 Option to Purchase. For the period (the “**Option Period**”) beginning on the Effective Date and terminating on the 4th anniversary of the Effective Date, unless extended as provided in Section 1.2 below, at 5:00 PM (Central Time) (the “**Termination Date**”), EAL grants to the Option Holder an exclusive option to purchase, accept and acquire from EAL (the “**Option**”), on the terms and subject to the conditions hereof, all or any portion of the following described immovable property (the “**Property**”):

- (a) That certain parcel of land situated in Pulaski County, Arkansas, being more particularly described in Exhibit A attached hereto and made a part hereof by this reference (the “Land”);
- (b) Easements, rights-of-way, rights of ingress or egress and other interests in, or to, any land, highway, street, road or avenue, in, on, across, in front of, abutting or adjoining the Land, and all other rights, privileges, appurtenances, rights, ways, advantages, attachments, prescriptions and rights of prescription thereunto belonging or in anywise appertaining owned by EAL and in any way related to the Land; and
- (c) Any and all buildings, improvements, constructions, component parts, fixtures and other improvements on the Land (the “Improvements”).

Option Holder shall have the exclusive right to determine what portion of the Land that Option Holder is electing to purchase pursuant to the terms and conditions herein. The precise legal description of the Land (or the portion of the Land Option Holder elects to purchase) shall be established by the Survey (as defined below), as provided in Section 5.1(a) below.

1.2 Extension of Option Period. Option Holder shall have the right to extend the Option Period for up to two (2) successive periods of three (3) years each (each, an “Extension Period”) by (a) delivery of written notice to EAL no later than six (6) months prior to the expiration of the Option Period (as the same may have been previously extended), and (b) payment to EAL of the First or Second Extension Consideration, as applicable, in accordance with Section 2.1 below. If the right to extend is properly exercised as provided above, the first Extension Period will extend the Option Period through the 7th anniversary of the Effective Date (the “First Option Period”), and the second Extension Period will extend the Option Period through the 10th anniversary of the Effective Date (the “Second Option Period”).

ARTICLE II. CONSIDERATION

2.1 Option Consideration. EAL has granted this exclusive Option to the Option Holder for the following consideration, which shall be credited, in the aggregate, to the Purchase Price under Section 2.2 in the event this Option is exercised as herein provided:

- (a) Two Hundred Thirty Dollars (\$230.00) per acre for the initial Option Period, payable on the Effective Date;
- (b) Two Hundred Fifty-Eight and 87/100 Dollars (\$258.87) per acre, payable upon exercise of the right to extend the Option Period for the First Extension Period (the “First Extension Consideration”); and

(c) Two Hundred Eighty-Two and 87/100 Dollars (\$282.87) per acre, payable upon exercise of the right to extend the Option Period for the Second Extension Period (the “Second Extension Consideration”).

2.2 Purchase Price. If the Option Holder properly exercises the Option, the purchase price (the “Purchase Price”) for the, subject to the pro-rations, credits, and payments specified in this Agreement, shall be determined and payable based on the year of the Option Period (each, an “Option Year”) in which the Option is exercised, as follows:

Option Year	Purchase Price (per acre)	Cash Portion (per acre)
1	\$23,000.00	\$18,000.00
2	\$23,000.00	\$18,000.00
3	\$24,400.70	\$19,096.20
4	\$25,132.72	\$19,669.09
5	\$25,886.70	\$20,259.16
6	\$26,663.30	\$20,866.93
7	\$27,463.20	\$21,492.94
8	\$28,287.10	\$22,137.73
9	\$29,135.71	\$22,801.86
10	\$30,009.78	\$23,485.92

At the Closing, the Purchaser (defined herein) shall pay the cash portion of the Purchase Price by wire transfer of immediately available funds to the account or accounts designated by EAL, and the balance of the Purchase price shall be donated by EAL.

ARTICLE III. EXERCISE OF THE OPTION

3.1 Exercise of the Option. Subject to satisfaction of the conditions in Section 3.2, in order to exercise the Option, the Option Holder shall deliver to EAL on or prior to the Termination Date the exercise notice attached hereto as Exhibit B (the “Exercise Notice”) completed and executed by the Option Holder or its assignee as the party that shall acquire the Property at the Closing (the “Purchaser”), designating what portion of the Land such Purchaser is electing to purchase (and references herein to “the Land” shall thereafter be deemed to refer to such portion). Upon the effective exercise of the Option, a binding agreement to purchase and sell the Property shall exist between EAL and the Purchaser, subject to the terms and conditions contained herein.

3.2 Conditions to the Exercise of the Option. The Option Holder shall not be entitled to exercise the

Option (and any attempt to exercise the Option shall not be effective) until the following condition has been satisfied:

- (a) A potential commercial development prospect has committed in writing either (i) to locate the Project on the Land, or (ii) to locate the Project on property situated to the south of the Land and that such prospect requires the Land in order to provide rail service to such Project.

ARTICLE IV. THE CLOSING

4.1 The Closing. Following the effective exercise of the Option, the closing of the purchase and sale of the Property (the “Closing”) shall take place at a location designated by the Purchaser located in the state in which the Property is located at 10:00 AM not later than the date which is sixty (60) days after the date on which the Option is effectively exercised (the date of such exercise being hereinafter referred to as the “Option Exercise Date”). The date on which the Closing occurs is referred to in this Agreement as the “Closing Date.” The Closing may occur through an escrow with the Title Company (defined herein) or through the delivery of the necessary closing documents to the Purchaser’s counsel with appropriate escrow instructions, and provided that a party has delivered all of its closing documents properly executed, it shall not be necessary for the party’s representative to attend the Closing.

4.2 EAL’s Closing Deliveries. At the Closing, EAL shall deliver to the Purchaser the following documents duly executed and, where appropriate, acknowledged by EAL and the following other items:

- (a) A No Warranty Deed substantially in the form attached hereto as Exhibit C, but subject to modification to include the Reserved Easements pursuant to Section 5.2 below (the “Conveyance Document”);
- (b) Any instruments requested by EAL pursuant to Section 5.2;
- (c) Such other documents and instruments as the Purchaser shall deem reasonably necessary to consummate the transactions contemplated hereby; and
- (d) Payment of the costs and fees allocated to EAL pursuant to Section 8.1 to the extent such costs and fees are customarily paid at Closing.

4.3 Purchaser’s Closing Deliveries. At the Closing, the Purchaser shall deliver to EAL the following documents duly executed and, where appropriate, acknowledged by the Purchaser and the following other items:

- (a) The Purchase Price, subject to the pro-rations, credits and payments specified in this Agreement;
- (b) The Conveyance Document;

- (c) Any and all other documents, notices, and acknowledgements required by or in connection with any of the Permitted Encumbrances (as defined below);
- (d) Such organizational and authorizing documents of the Purchaser as shall be reasonably required by EAL and/or the Title Company (as defined below) authorizing the Purchaser to accept and acquire the Property pursuant to this Agreement and the execution of this Agreement, the Exercise Notice and any documents to be executed by the Purchaser at the Closing;
- (e) Any instruments requested by EAL pursuant to Section 5.2;
- (f) Such other documents and instruments as EAL shall deem reasonably necessary to consummate the transactions contemplated hereby; and
- (g) Payment of the costs and fees allocated to the Option Holder pursuant to Section 8.1 to the extent such costs and fees are customarily paid at Closing.

ARTICLE V.
TITLE TO THE PROPERTY

5.1 Title and Survey Matters.

- (a) No later than forty (40) days prior to the Closing Date, the Option Holder shall obtain, at their sole cost and expense: (i) from a nationally-recognized title company (the "Title Company") (licensed to do business in the state in which the Property is located) of its choosing, a title commitment with respect to the Property (the "Commitment") for owner's title insurance on the Property for an amount not less than the Purchase Price; and (ii) an ALTA/ACSM survey of the Property (the "Survey"). The Survey shall reflect ALTA/ACSM requirements, including without limitation, a metes and bounds legal description of the Property with the gross acreage calculated to the nearest one-thousandth of an acre, together with the location of all easements, rights-of-way and other similar encumbrances. EAL and the Option Holder hereby agree that the legal description contained in the Survey shall be the legal description used for the Conveyance Document. The Survey shall be certified to EAL and the Option Holder. The Option Holder shall direct the Title Company to deliver copies of the Commitment (together with a copy of any instruments forming the basis of any exception or requirement reflected in the Commitment), the Survey and any and all updates, revisions, amendments or modifications to EAL simultaneously with the delivery of such materials to the Option Holder.
- (b) As a condition to the Purchaser's obligation to proceed with the Closing, title to the Property shall be subject only to the Permitted Encumbrances, as defined in Exhibit E attached hereto. Title to

the Property, however, shall be conveyed without any representations or warranties whatsoever, and shall be subject to, without limitation, the Permitted Encumbrances. Purchaser acknowledges that the Property is presently subject to the lien(s) of one or more mortgages and/or deeds of trust granted by EAL. EAL shall have a reasonable time after the Closing Date, but in no event more than three (3) months after the Closing Date, to obtain and furnish to Purchaser a recordable instrument releasing the Property from such lien(s), in failure of which Purchaser may obtain the dissolution or rescission of the conveyance of the Property to Purchaser.

- (c) If the Commitment, the Survey (each as updated, revised, amended or modified) or any UCC lien search (the "Preliminary Materials") discloses any mortgage, lien, easement, pledge, charge, security interest, adverse claim or other encumbrance (each an "Encumbrance" and collectively, the "Encumbrances"), defects or Title Company requirements with respect to the Property to which the Option Holder reasonably objects, the Option Holder shall mutually notify EAL in a single writing (the "Title Objection Notice") of all such objections, defects or requirements (each a "Title Objection") within ten (10) days after the receipt of the Preliminary Materials, but in no event later than thirty (30) days prior to the Closing Date. Thereafter, EAL shall be entitled to attempt to cure any such Title Objections that EAL, in its sole discretion, chooses to attempt to cure on or prior to the Closing (the "Title Cure Period"). Any Encumbrance, defect or requirement not set forth in the written notice of Title Objections shall be deemed waived as objections to title and shall be deemed to be included in and be a part of the Permitted Encumbrances. If the Option Holder fails to timely and properly submit a Title Objection Notice to EAL, then all Encumbrances, defects and requirements shall be deemed waived as objections to title and shall be deemed to be included in and be a part of the Permitted Encumbrances.
- (d) Except with respect to Mandatory Cure Items (defined herein), in no event shall EAL be required to cure or to attempt to cure any Title Objections or to otherwise cause or attempt to cause title to the Property to be in accordance with the terms of this Agreement at the Closing. No later than ten (10) days after EAL's receipt of the Title Objection Notice, EAL shall notify the Option Holder (the "Title Response Notice") as to those Title Objection(s), if any, that EAL, in its sole discretion, elects to attempt to cure prior to Closing (the "Voluntary Cure Items"). Notwithstanding the foregoing, EAL shall be obligated to release or discharge of record the following with respect to the Property (collectively, "Mandatory Cure Items"): (i) any mortgages created or assumed by EAL; and (ii) any Encumbrances intentionally created by EAL after the Effective Date without the consent of the Option Holder, except as expressly permitted by the terms of this Agreement.

- (e) If EAL fails to deliver the Title Response Notice to the Option Holder within the time period set forth above, EAL shall be deemed to have notified the Option Holder that EAL shall not cure any Title Objection(s) raised in the Title Objection Notice other than Mandatory Cure Items. If EAL is unwilling or unable to cure any Title Objection within the Title Cure Period or cause the Title Company to remove the same from the title insurance policy of the Purchaser, the Option Holder shall have the option of either: (i) waiving such Title Objections and proceeding with the Closing, accepting title subject to such Title Objections without any abatement or reduction to the Purchase Price; or (ii) no later than ten (10) days after the Option Holder's receipt (or deemed receipt) of the Title Response Notice, rejecting the title, revoking the exercise of the Option, whereupon this Agreement (including, without limitation, the Option) shall terminate and neither party hereto shall have any further obligations hereunder other than those obligations expressly stated herein to survive the termination of this Agreement, except that if EAL has agreed to undertake Voluntary Cure Items and has not cured all such Voluntary Cure Items by Closing, then the Option Holder may exercise the termination right in this subpart (ii) at Closing.
- (f) EAL shall have twenty (20) days from and after its receipt of the Survey, suspending the Closing if necessary to accommodate such time period in the event that the Option Holder has not timely delivered the Survey, to ascertain whether the Survey and the Commitment include all apparent or observable electric utility easements and rights-of-way, whether recorded or unrecorded. If the Survey does not correctly include all such easements and rights-of-way, EAL shall have the right to direct that the surveyor correct such errors and redeliver a revised Survey, at the Option Holder's cost.

5.2 Reservation of Easements. EAL shall have the right, in its sole discretion, (a) to include in the Conveyance Document a reservation of easements and rights-of-way for EAL and/or any one or more of its affiliates' distribution and transmission electrical substations and lines and communications towers and other infrastructure, including roads and other utility easements, whether in existence on the Option Exercise Date, or otherwise contemplated by EAL or its affiliates for any reasonable purpose prior to closing, which will be shown on the Survey or on a separate survey reasonably acceptable to EAL and the Purchaser, together with the unlimited right of ingress and egress to said easements and rights of way and the right to maintain, operate, alter and upgrade the electric and communications facilities thereon, or (b) to establish such reservation and rights under a separate instrument utilizing EAL or its affiliates' standard form of instrument (including, without limitation, EAL's right-of-way agreement), and the Purchaser agrees to execute and deliver same at Closing. The rights established pursuant to this Section 5.2 in favor of EAL and/or its affiliates are referred to herein as the "Reserved Easements". It is understood between the parties that the purchaser of the property, or

its successors or assigns, at any time after the Closing shall have the right in its or their sole discretion to require the removal and/or relocation of any or all of the same by EAL or its affiliates, at the expense of the purchaser of the property, or its successors or assigns. In addition, in the event Purchaser or its assigns constructs a rail line across the Land which obstructs EAL's access to its property located west of the Land ("EAL Property"), then EAL reserves the right to require Purchaser, at its sole cost and expense, to construct a rail crossing(s) and other ancillary infrastructure ("Rail Crossing Infrastructure") along the Reserved Easement roads to permit EAL's unimpeded access to the EAL Property. Purchaser shall pay the entire cost associated with the construction, maintenance, repair and replacement of the Rail Crossing Infrastructure. Specifications for the Rail Crossing Infrastructure will be provided by EAL, in its sole discretion.

ARTICLE VI. ENVIRONMENTAL

6.1 Environmental Investigations. The parties hereto acknowledge and agree that the Option Holder, has previously-conducted, at its own cost and expense, environmental and archeological surveys of the Land, and that the Option Holder has had the opportunity to review all such materials prior to entering into this Agreement. During the period between the Effective Date and the earlier to occur of the (i) expiration or termination of this Agreement and (ii) the Closing Date, neither the Option Holder nor any of its agents shall collect any further samples (including, without limitation, soil, sludge, air, surface water, groundwater, effluents and discharges) from the Property, conduct any further borings on the Property or otherwise conduct any further intrusive tests of the Property or any Improvements without the prior written consent of EAL, in its sole discretion, and, if granted, shall be on such terms and conditions as EAL may require (including, without limitation, the granting of comprehensive indemnity and hold harmless agreements in favor of EAL and its affiliates, and/or provide and maintain insurance coverages in forms and amounts as directed by EAL.). During the period between the Effective Date and the earlier to occur of the (i) expiration or termination of this Agreement and (ii) the Closing Date, neither the Option Holder nor any of its agents or assigns shall conduct any additional environmental assessments on the Property without the prior written consent of EAL, in its sole discretion.

6.2 Environmental Remediation. In no event shall EAL be required to commence or agree to commence any action or proceeding, or otherwise expend or agree to expend any funds for Environmental Remediation arising out of or related to the Property. During the period between the Effective Date and the earlier to occur of the (i) expiration or termination of this Agreement and (ii) the Closing Date, neither the Option Holder nor any of its agents shall conduct any Environmental Remediation on, at or under the Property without the prior written consent of EAL, in its sole discretion. In the event EAL consents to any such Environmental

Remediation, EAL shall be responsible for the oversight and management of such Environmental Remediation and the Option Holder shall be responsible for the cost and expense of such Environmental Remediation. For the purpose this Section 6.2, “Environmental Remediation” means the remediation, treatment, transportation, storage, removal or disposal of contaminated soil, debris and groundwater, and buried sludge, including but not limited to the containment of contaminated groundwater, the capping of areas to minimize the infiltration of surface waters or rainfall into the subsurface, landfarming, risk-based corrective actions or alternatives, including No Further Action determinations and natural attenuation, the protection, removal or identification of cultural resources, and any other similar activities.

ARTICLE VII. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of EAL.

- (a) Organization and Existence. EAL is an Arkansas corporation, duly formed, validly existing and in good standing under the laws of the State of Arkansas, and has all requisite power and authority to own, use, lease and operate its properties and to carry on its business as now being conducted. EAL is duly qualified to do business and is in good standing in the State of Arkansas, the state where the Property is located.
- (b) Execution, Delivery and Enforceability. EAL has all requisite power and authority to execute and deliver, and perform its obligations under, this Agreement and to consummate the transactions contemplated hereby.
- (c) Each of the representations and warranties of EAL contained in this Agreement shall be void and of no further force or effect from and after the Closing.

7.1 Representations and Warranties of the Option Holder.

- (a) Existence. The Option Holder is a government entity and can be represented by the Little Rock Port Authority, a political subdivision of the City of Little Rock.
- (b) Execution, Delivery and Enforceability. The Option Holder has all requisite power and authority to execute and deliver, and perform its obligations under, this Agreement and to consummate the transactions contemplated hereby. No consent, approval, authorization or order of any court or governmental entity is required for the execution, delivery and performance by the Option Holder of this Agreement (except as have already been obtained) or the consummation of the transactions contemplated hereby by the Option Holder (except as shall have been obtained prior to exercise of

the Option), and no public bid process, public notice, request for proposal or similar procedure is required by applicable law, statute or regulation for the execution, delivery and performance by the Option Holder of this Agreement or the consummation of the transactions contemplated hereby by the Option Holder. The execution and delivery by the Option Holder of this Agreement and the performance by the Option Holder of its obligations hereunder has been duly and validly authorized by all necessary action required on the part of the Option Holder under applicable law. Assuming the due authorization, execution and delivery by EAL of this Agreement, this Agreement constitutes the valid and legally binding obligation of the Option Holder.

(c) No Violation. With respect to the Option Holder, neither its execution and delivery of this Agreement, nor its performance or compliance with any provision hereof (or any exhibit hereto), nor its consummation of the transactions contemplated hereby:

(i) violate, or conflict with, or result in a breach of, any provisions of applicable law or under the Option Holder charter or the legislation authorizing the creation of the Option Holder;

(ii) result in a default (or give rise to any right, including any right of termination, purchase, first refusal, cancellation, acceleration or guaranteed payment, or a loss of rights) under, or conflict with, or result in a breach of, any of the material terms, conditions or provisions of any contract or any note, bond, mortgage, loan agreement, deed of trust, indenture, license or agreement or other instrument or obligation to which the Option Holder is a party or by which the Option Holder is bound.

(d) As-Is Condition. The Option Holder acknowledges and agrees that, except as otherwise expressly provided herein, that the Purchaser will purchase the Property based solely upon the Option Holder inspections, examinations and investigations of the Property and that the Purchaser will purchase the Property "AS IS" in its present condition (as more fully set forth in Exhibit C hereto), subject to reasonable use, wear, tear and natural deterioration of the Property between the Effective Date and the Closing, and the Option Holder further agrees that EAL shall not be liable for any latent or patent defects in the Property. It is understood and agreed that the Purchase Price has been adjusted by prior negotiation to reflect that the Property is being sold by EAL and purchased by the Purchaser subject to the foregoing.

(e) No Relocation Obligation. The Option Holder acknowledges and agrees that subject to the provisions of Section 5.2 above: (i) EAL has no obligation to remove or relocate any utilities, roads, pipelines, water bodies (whether navigable or otherwise), Improvements, structures, infrastructure or other improvements located on the Property; (ii) any such removal or relocation

shall be at the Option Holder's sole cost and expense and, unless mutually agreed by the Option Holder and EAL, shall occur after the Closing; and (iii) if any such proposed removal or relocation would involve any property of EAL or any of its affiliates, such removal or relocation must be consented to by EAL or its affiliates, each in their reasonable discretion.

**ARTICLE VIII.
TAXES AND OTHER EXPENSES**

8.11 Costs. EAL and the Option Holder shall bear the costs and fees checked for each of them on the list below:

	EAL	Option Holder
Mortgage and conveyance and other certificates in EAL's name	X	
Tax and Other Searches	X	
Transfer or Documentary of Transaction Fees or Taxes		X
Survey		X
Title Abstract, Examination and Insurance Premium		X
All Recordation Costs		X
Cancellation of mortgages or other inscriptions bearing against EAL	X	
EAL's Closing Fees	X	
Option Holder's Closing Fees		X
Subdivision (if required)		X

8.2 Attorneys' Fees. Except as otherwise expressly specified herein, each of the parties shall pay its own attorneys' fees.

8.3 Brokerage. Each party hereto hereby represents and warrants to the other that it has dealt with no brokers, agents or finders in connection with the transactions contemplated by this Agreement, except for Flake & Kelley Commercial who represents Option Holder in this transaction. Option Holder shall pay a fee to Flake & Kelley Commercial pursuant to a separate agreement. Each party hereto shall indemnify and defend the other party from any loss incurred by the other party, including legal fees and disbursements, arising out of a claim by any broker, agent or finder that they acted on behalf of the indemnifying party in connection with this transaction.

8.4 Survival. The provisions of this Article VIII shall survive termination or expiration of this Agreement

and, if the Option is exercised, the Closing.

ARTICLE IX. PRO-RATION

9.1 Pro-ration.

- (a) All water, sewer, electric, gas, fuel and all other operating expenses with respect to the Property for the month in which the Closing occurs and all real estate taxes and other assessments with respect to the Property for the year in which the Closing occurs shall be pro-rated to the Closing Date in immediately available funds with the Option Holder receiving the benefits and burdens of ownership on the date of the Closing. If the Closing shall occur before the tax rate or the assessed valuation of the Property is fixed for the then current tax year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation. Subsequent to the Closing, when the tax rate and the assessed valuation of the Property is fixed for the year in which the Closing occurs, the parties hereto hereby agree to adjust the pro-ration of taxes, and if necessary, to refund or repay such sums as shall be necessary to effect such adjustment.
- (b) The provisions of this Article IX shall survive the Closing.

ARTICLE X. RISK OF LOSS

10.1 Casualty. If, during the period between the Option Exercise Date and the Closing, a material part (as hereinafter defined) of the Property is taken by eminent domain, condemnation, expropriation or destroyed by fire or casualty, EAL shall promptly notify the Option Holder of such event and the Option Holder shall have the option, to be exercised within ten (10) business days after the Option Holder receives such notification from EAL, time being of the essence, to terminate this Agreement, whereupon neither party hereto shall have any further obligations hereunder other than those obligations expressly stated herein to survive the termination of this Agreement. If the Option Holder does not elect to terminate this Agreement, there shall be an abatement of the Purchase Price commensurate with the loss of value to the Property due to the casualty. For the purposes of this Agreement, a “material part” of the Property shall mean (i) a part of the Property with a value, as reasonably determined by EAL, in excess of Four Hundred Thousand Dollars (\$400,000) or (ii) a part of the Property with an area greater than seventeen (17) acres.

ARTICLE XI. REMEDIES

11.1 EAL's Remedies. If either Option Holder fails to comply with the material terms and conditions of this Agreement (each a "Breach"), EAL shall give the Option Holder written notice of such Breach and a period of thirty (30) days from and after the giving of such notice to cure such Breach. If such Breach is not cured within such thirty-day period, EAL may terminate this Agreement and/or pursue any available legal remedies. If the Option Holder is diligently proceeding to cure such Breach but the nature of the Breach is such that it cannot be reasonably cured within such thirty-day period, then the Option Holder shall be provided additional time, which in no case shall exceed ninety (90) days from the giving of notice pursuant to this Section 11.1, to cure such Breach. If the Option Holder is provided additional time to cure the Breach and such Breach is not cured within such additional time, not to exceed such ninety-day period, EAL may terminate this Agreement and/or pursue any available legal remedies. Notwithstanding the foregoing, if the Breach involves the Option Holder's failure to close when required under this Agreement (in violation of the terms and conditions of this Agreement), then the Option Holder shall not be entitled to a period of time within which to cure such Breach and EAL's sole and exclusive remedy for such Breach shall be to terminate this Agreement.

11.2 Option Holder's Remedies. In the event that the Option Holder effectively exercises the Option and EAL fails to comply with the terms of this Agreement and as a result the Closing does not occur, then the Option Holder, as its sole and exclusive remedy, may either: (a) terminate this Agreement in accordance with its written instructions; or pursue the remedy of specific performance of EAL's obligations under this Agreement; provided, however, that (i) the Option Holder shall be entitled to such remedy only if: (A) any such suit for specific performance is filed within sixty (60) days after the Option Holder became aware of the default by EAL; (B) the Option Holder is in material default under this Agreement; and (C) the conveyance sought in the suit for specific performance is otherwise on all of the applicable terms and conditions set forth in this Agreement. The Option Holder hereby agrees that prior to its exercise of any rights or remedies as a result of any defaults by EAL, the Option Holder shall first deliver notice of said default to EAL and EAL shall have thirty (30) days thereafter in which to cure such default, if EAL elects to do so. In no event whatsoever will the Option Holder file any instrument of record against title to the Property or seek money damages of any kind as a result of any default by EAL under any of the terms of this Agreement and in no event shall EAL be liable to the Option Holder for any special, punitive or consequential damages.

ARTICLE XII. COVENANTS

12.1 Access to Property.

- (a) During the period between the Effective Date and the earlier to occur of the (i) expiration or termination of this Agreement and (ii) the Closing Date, the Option Holder and its agents shall have access to the Property from time to time, upon reasonable advance notice, at reasonable times, accompanied by a representative of EAL, for the purpose of conducting inspections, investigations and surveys of the Property (including, without limitation, the Survey described in Article V), at its sole expense, subject to the provisions and limitations of this Agreement (including the restrictions on environmental investigations set forth in Section 6.1 above). If requested by EAL, the Option Holder and its agents shall obtain and maintain during such period liability insurance coverage in the amounts as reasonably requested by EAL, naming EAL and its affiliates as additional insureds, in connection with such inspections, investigations and surveys. The Option Holder (but not its agents) may elect to self-insure for the insurance coverage reasonably requested by EAL provided that all insurance mechanisms which protect or are intended to protect EAL, including additional insured status, waiver of subrogation and waiver of rights of recovery, remain enforceable and available for EAL's benefit. The Option Holder agrees that all amounts of self-insured retentions and deductibles are the responsibility of and shall be borne by the Option Holder. If the Option Holder elects to self-insure, the Option Holder's obligation to self-insure shall survive the termination or expiration of this Agreement and/or the Closing in the event any claims are made with respect to incidents occurring prior to the expiration or termination of this Agreement and/or the Closing. Additionally, if requested by EAL, the Option Holder and its agents will enter into separate access agreements mutually acceptable in form and substance prior to accessing the Property. The scope of the Option Holder's examination may include all matters relating to building permits, zoning, resubdivision and the availability of other governmental approvals or consents, subject to the provisions of this Agreement (including the restrictions on environmental investigations set forth in Section 6.1 above).
- (b) The Option Holder acknowledges and agrees that for the purposes of this Section 12.1, if a third party desires access to the Property during the period between the Effective Date and the earlier to occur of the (i) expiration or termination of this Agreement and (ii) the Closing Date for the purpose of conducting inspections and investigations, such third party and its agents shall be required to enter into separate access agreements with EAL which are mutually acceptable in form and substance prior to accessing the Property.

(c) In addition to any obligations contained in any access agreements required by EAL, the Option Holder shall indemnify, hold harmless and defend, EAL (and any person or entity with the right to occupy the Property) from and against any and all claims, liabilities, losses, damages, liens, expenses, suits and fees (including, without limitation, reasonable attorneys' fees, disbursements and related costs) arising out of or related to the entry or activities of the Option Holder or its agents on the Property, and also shall repair any damages to the Property arising out of or related to such entry or activities. The provisions of this Section 12.1 shall survive the expiration or termination of this Agreement and, if the Option is exercised, the Closing.

12.1 Efforts to Prevent Takings. During the period between the Effective Date and the earlier to occur of the (i) expiration or termination of this Agreement and (ii) the Closing Date, the Option Holder shall institute, and shall use its best efforts to cause all other competent authorities with the power of eminent domain or other taking action under the laws of the State of Arkansas to refrain from instituting, any condemnation, expropriation or eminent domain proceedings or exercising any other powers of condemnation, expropriation, eminent domain or other taking action with respect to the Property, or any part thereof or any interest therein, during the Option Period and, upon the effective exercise of the Option, during the period between the Option Exercise Date and the Closing.

12.2 Operation and Use of the Property. During the period between the Effective Date and the earlier to occur of (i) the expiration or termination of this Agreement and (ii) the Closing Date, EAL may use, operate and maintain the Property for any lawful purpose (including, without limitation, subjecting the Property to oil, gas and other minerals leases (with waivers of surface rights), farmland and agricultural leases, and other rights of occupancy and access), subject to reasonable use, wear, tear and natural deterioration. EAL agrees that such leases shall provide that the lessor thereunder may terminate the lease at any time by providing the lessee with not less than thirty (30) days prior, written notice.

ARTICLE XIII. TERMINATION

13.1 Termination by Mutual Agreement or by the Option Holder. In addition to any other rights of termination granted to the Option Holder or EAL in this Agreement, this Agreement may be terminated at any time prior to the exercise of the Option, (i) by the mutual consent of the Option Holder and EAL; or (ii) by the Option Holder in its sole discretion by delivering written notice to EAL, except if the Option Holder is in Breach of this Agreement at the time of such notice. In either such event, this Agreement shall terminate and be of no further force or effect, except for those provisions of this Agreement which expressly provide that such obligation shall survive its termination or the Closing.

(c) Any changes in the names or addresses set out in subsection (a) above shall be through notice in conformity with the requirements of this Section 14.1.

(d) Notices under this Agreement may be given by a party or by its counsel or other authorized agent.

14.1 Section Headings. The headings of the articles, sections and subsections of this Agreement are provided for convenience and do not affect the construction or interpretation of this Agreement.

14.2 Binding Agreement; Entire Agreement. This Agreement is binding upon, and inures to the benefit of, the parties and their respective successors and permitted assigns. This Agreement and any exhibits or schedules attached hereto constitute the final agreement of the parties. This Agreement is the complete and exclusive expression of the parties' agreement on the matters contained herein. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of the other party, except for those expressly contained in this Agreement. There are no conditions precedent for the effectiveness of this Agreement other than those expressly stated in this Agreement. The parties acknowledge and agree that the recitals provided above constitute an integral part of this Agreement and shall be given the same force and effect as any other provision in this Agreement.

14.3 Amendments; Waivers. The parties may not amend this Agreement, except by written agreement signed by all of the parties that identifies itself as an amendment to this Agreement. No failure or delay in exercising any right or remedy, or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that one instance and only for the limited purpose that it is given and not to be construed as a waiver on any future occasion or against any other person. To the extent any course of dealing, act, omission, failure or delay in exercising any right or remedy under this Agreement constitutes the election of an inconsistent right or remedy, that election does not constitute a waiver of any right or remedy, or limit or prevent the subsequent enforcement of any contract provision. No single or partial exercise of any right or remedy under this Agreement precludes the simultaneous or subsequent exercise of any other right or remedy.

14.4 Assignment and Delegation. The Option Holder may not assign any of its rights or interest under this Agreement nor delegate any performance under this Agreement without the prior written consent of EAL, in its sole discretion. Notwithstanding any such consent, the assigning party shall remain fully liable to the other party for the performance of its obligation hereunder. Any purported assignment of rights or delegation of performance in violation of this Section is void.

14.5 Recordability. This Agreement may not be recorded without the prior written consent of all of the parties hereto (which consent shall not be unreasonably withheld, conditioned or delayed), provided, however, that if this Agreement is recorded and the Option Holder does not exercise the Option as provided in this Agreement, the Option Holder shall record written notice of its non-exercise of the Option upon expiration of the Option or termination of this Agreement.

14.6 Severability. If any provision of this Agreement or the application thereof to any person or circumstance is held to be illegal, invalid or unenforceable, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

14.7 Other Parties. Except as specifically provided herein, nothing in this Agreement shall be construed as giving any person, firm, corporation or other entity, other than the parties hereto, any rights, remedy or claim under or in respect to this Agreement or any provision thereof.

14.8 Counterparts. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other party to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other party.

14.9 Acceptance. The acceptance by the Purchaser of the Conveyance Document shall be deemed acknowledgement by the Option Holder that EAL has complied fully with all of its obligations hereunder and that EAL is discharged therefrom and that EAL shall have no further obligation or liability with respect to any of the arrangements made by EAL in this Agreement, except for those provisions of this Agreement which expressly provide that such obligation of EAL shall survive the Closing.

14.10 Weekends; Holidays. If the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the laws of the state in which the Property is located, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

14.11 Governing Law. The laws of the state in which the Property is located (without giving effect to its conflicts of laws principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance and enforcement.

14.12 Further Assurances. Each party hereto shall, from time to time, execute, deliver and furnish such documents, and take any such action, as the other party may reasonably deem necessary to (a) correct any errors which may be contained in this Agreement or any of the documents which are to be

delivered at Closing and (b) upon effective ~~EXHIBIT A~~ ^{EXHIBIT B} the Option, consummate fully the transactions contemplated hereby under this Agreement or any of the documents which are to be delivered at Closing.

14.13 Waiver of Jury Trial. The parties hereto hereby waive any right to jury trial in connection with the enforcement of any of their respective rights and remedies hereunder or any litigation arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement before the hereinafter undersigned competent witnesses as of the date first written above.

Witnesses:

ENTERGY ARKANSAS, LLC

Printed Name:

By: _____

Name: _____

Title: _____

Printed Name:

Witnesses:

CITY OF LITTLE ROCK

Printed Name:

By: _____

Name: _____

Title: _____

Printed Name:

DESCRIPTION OF LAND

[SEE NEXT PAGE]

Exhibit B
FORM OF EXERCISE NOTICE

[Date]

Entergy Arkansas, LLC Mail Unit No. L-ENT-5B 639 Loyola Avenue New Orleans, LA 70113
Attn: Manager, Real Estate

Entergy Services, Inc. Mail Unit No. L-ENT-22A 639 Loyola Avenue
New Orleans, LA 70113
Attn: Legal Department, Real Estate

Re: Project_ – Exercise of Option Ladies and Gentlemen:

This notice of exercise of option (the “Exercise Notice”) is given pursuant to Section 3.1 of that certain Option Agreement, dated _____, 20____ the “Option Agreement”), by and between Entergy Arkansas, LLC, a Texas Limited Liability Company (“EAL”), and the _____, a political subdivision of the _____ (the “Option Holder”).

Pursuant to Section 3.1 of the Option Agreement, the Option Holder hereby exercises the Option to purchase the Property or that portion of the Property designated by Option Holder in Attachment A on the terms and subject to the conditions set forth in the Option Agreement.

The undersigned represents and warrants that (a) the undersigned has all requisite power and authority to execute and deliver this Exercise Notice, and (b) is duly and validly authorized to perform its obligations under the Option Agreement to accept and acquire the Property.

For the purposes of the Option Agreement, the date that this Exercise Notice is delivered to the addresses pursuant to Section 14.1 of the Option Agreement shall be deemed the Option Exercise Date.

IN WITNESS WHEREOF, the undersigned duly authorized signature has caused this Exercise Notice to be executed the date first written above.

By: _____

Title: _____

Date: _____

Attachment A
THE PROPERTY

Exhibit C
CONVEYANCE DOCUMENT (*SEE ATTACHED*)

Exhibit D

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

[To be completed]

Exhibit E

PERMITTED ENCUMBRANCES

The sale of the Property at the Closing shall be subject to the following (collectively, “Permitted Encumbrances”):

- (1) *Ad Valorem* Taxes for the year in which the Closing takes place, if same are not paid in advance, and other *Ad Valorem* Taxes not yet due and payable;
- (2) Those exceptions and other matters indicated on “Schedule B” of the Commitment;
- (3) Those matters that may be deemed accepted by the Option Holder as Permitted Encumbrances pursuant to Section 5.1;
- (4) Any matters shown on the Survey;
- (5) Acts done or suffered by or through the Option Holder;
- (6) The Reserved Easements;
- (7) A reservation in favor of EAL of any and all oil, gas and/or other minerals and mineral rights on, in, under or in any way pertaining to the Property, which are not subject to any prior mineral reservation, provided that EAL waives surface rights;
- (8) All farmland and agricultural leases, hunting leases, and other rights of occupancy and access (including, without limitation, all such leases and rights arising after the Effective Date if permitted pursuant to the terms of the Agreement) related to the Property of which the Option Holder has been advised in writing by EAL and which will be assigned to the purchaser, regardless of whether any of the foregoing are recorded.