

**CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES**

This Contract is made as of the <sup>November</sup> 16 day of ~~October~~, 2015, by and between City of Hollywood, a Municipal Corporation of the State of Florida, by and through its City Commission hereinafter the CITY, and Lighthouse Utility Consulting, Inc., whose principal office is located at 5224 West SR 46, Suite 107, Sanford, Florida 32771 hereinafter referred to as the CONSULTANT, and whose Federal I.D. number is 30-0526843.

WHEREAS, the CITY desires to employ a consultant to perform consulting services with regard to various water and sewer rates, financial analysis and revenue projections, various financial reports, installation and training on a rate model to be used for all rate studies and financial projections and true-up reports and other services as detailed in RFQ-4464-15-RL; and

WHEREAS, based on a recommendation of its City Manager, the City Commission authorized the negotiation of contractual terms;

NOW, THEREFORE, in consideration of the mutual promises herein, the CITY and the CONSULTANT agree as follows:

**ARTICLE 1 – SERVICES/CONSULTANT AND CITY REPRESENTATIVES**

The CONSULTANT’S responsibility under this Contract is to meet the requirements set forth in RFQ-4464-15-RL and to provide consultation services as detailed above and as more specifically detailed in the RFQ and based upon approved work orders:

The CONSULTANT’S Representative shall be:

Jonathan Varnes  
Principal  
Lighthouse Utility Consulting  
5224 West SR 46, Suite 107  
Sanford, Florida 32771  
407-417-2324

The CITY’S Representative shall be:

Deputy Director Finance  
Public Utilities Department  
P.O. Box 229045  
Hollywood, FL 33022-9045  
Phone # (954) 967-4455

**ARTICLE 2 – RATE MODEL**

Pursuant to RFQ-4464-15-RL SCOPE OF SERVICES item number 8, the CONSULTANT is to provide the City at no cost to the City, with a Rate Model and user manual, within one year of the execution of this Contract that meets the requirements of the RFQ. The model provided will have the same features, look and feel as presented to the City during the Oral Presentation and represented to be the model the City would be receiving. For the period of this agreement Lighthouse Utility Consulting will provide free updates to the Rate Model program if they are developed but there are no requirements to update the program except to meet rate making

standards. The Rate Model to be delivered will be subject to the same Trade Secret restrictions as the previous Rate Model. Such Trade Secret restrictions are outlined in a separate agreement with the City.

### **ARTICLE 3 – SCHEDULE**

The CONSULTANT shall commence services within thirty (30) days of the date of execution of this Contract and this Contract shall expire three (3) years from the date of this Contract if not renewed for an additional three years.

### **ARTICLE 4 – PAYMENTS TO CONSULTANT**

- A. The CITY shall negotiate and issue work orders for each task to be completed by the CONSULTANT to cover all services and materials including “out of pocket” expenses and also any approved subcontracts. The CONSULTANT will bill the CITY on a monthly basis, or as otherwise provided, at the amounts set forth in each approved work order.
- B. Invoices received by the CITY from the CONSULTANT pursuant to this Contract will be reviewed and approved in writing by the CITY’S Representative, indicating that services have been rendered in conformity with the Contract, and then will be sent to the City Manager’s Office for review and approval and then to the CITY’S Finance Department for payment. All invoices shall contain a detailed breakdown of the services provided for which payment is being requested. Invoices shall be paid within thirty (30) days following the CITY Representative’s approval. In addition to detailed invoices, upon request of the CITY’S Representative or the City Manager, CONSULTANT will provide CITY with detailed periodic Status Reports on the project.
- C. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state “final invoice” on the CONSULTANT’S final/last billing to the CITY under a work order. This final invoice shall also certify that all services provided by CONSULTANT have been properly performed and all charges and costs have been invoiced to the CITY. Because this account will thereupon be closed, any and other further charges not properly included on this final invoice are waived by the CONSULTANT.

### **ARTICLE 5 – TRUTH-IN NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth in negotiation certificate certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT’S most favored customer for the same or substantially similar service. Should the CITY determine that said rates and costs were significantly increased due to incomplete, non-current or inaccurate representations, then said rates shall be adjusted accordingly. The rate for this three year Contract shall be \$187 per hour for Mr. Jonathan Varnes and would be less for any other staff or sub consultant approved by the CITY. A new rate will be negotiated if this Contract is renewed for a second three year period.

**ARTICLE 6 – TERMINATION**

This Contract may be cancelled by the CONSULTANT upon thirty (30) days prior written notice to the CITY’S Representative in the event of substantial failure by the CITY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the CITY, with or without cause, immediately upon written notice from the CITY’S Representative or the City Manager to the CONSULTANT. Unless the CONSULTANT is in breach of its Contract, the CONSULTANT shall be paid for services rendered to the CITY’S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY, the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the CITY.
- D. Continue and complete all parts of the work that have not been terminated.

**ARTICLE 7 – PERSONNEL**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT’S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT’S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY, nor shall such personnel be entitled to any benefits of the CITY including, but not limited to, pension, health and workers’ compensation benefits.

All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Article 1, must be made known to the CITY'S Representative and written approval must be granted by the CITY'S Representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

#### **ARTICLE 8 – SUBCONTRACTING**

CONSULTANT shall not subcontract any services or work to be provided to CITY without the prior written approval of the CITY'S Representative. The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make determination as to the capability of the subcontractor to perform properly under this Contract. The CITY'S acceptance of a subcontractor shall not be unreasonably withheld. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

#### **ARTICLE 9 – FEDERAL AND STATE TAX**

The CITY is exempt from payment of Florida State Sales and Use Taxes. The CITY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the CITY, nor is the CONSULTANT authorized to use the CITY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

#### **ARTICLE 10 – AVAILABILITY OF FUNDS**

The CITY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the City Commission. The City Commission will appropriate funds in the annual operating budgets as needed for this Contract if funds are available. Work orders will only be issued and approved by the City Manager or City Commission if sufficient funds are available.



**ARTICLE 11 – INSURANCE REQUIREMENTS INSURANCE:**

CONSULTANT shall maintain, at its sole expense, during the term of this Contract the following insurances:

- A. Commercial General Liability Insurance** naming the CITY as an additional insured with not less than the following limits:

General Aggregate	\$500,000
Products-Comp/Op Aggregate	\$500,000
Personal and Advertising Injury	\$500,000
Each Occurrence	\$500,000
Fire Damage	\$ 50,000

Coverage shall include contractual liability assumed under this agreement, products and completed operations, personal injury, broad form property damage, and premises operations.

- B.** While CONSULTANT need not maintain Commercial Automobile Liability Insurance, CONSULTANT shall provide to the CITY evidence that its principals maintain personal automobile liability insurance as required by state law.
- C.** While CONSULTANT need not maintain Workers' Compensation Insurance, CONSULTANT shall provide to the CITY a letter stating that it is exempt from the requirement to maintain workers' compensation insurance. The letter shall be effective for one year and must contain the CONSULTANT's signature. A new letter shall be timely provided for each subsequent year of this Agreement.
- D. Professional Liability** recognizing that the work governed by this Contract involves the furnishing of advice or services of a professional nature, the CONSULTANT shall purchase and maintain, throughout the life of the contract, Professional Liability Insurance which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the CONSULTANT arising out of the work governed by this Contract.

Professional Liability      \$1,000,000 Each Claim / \$2,000,000 Aggregate

**Please Note:** The Certificate shall contain a provision that coverage afforded under the policy will not be cancelled until at least thirty (30) days prior written notice has been given to the CITY. Certificates of insurance, reflecting evidence of the required insurance, shall be provided to the CITY. In the event the Certificate of Insurance provided indicates that the insurance shall terminate and lapse during the period of this Contract, the CONSULTANT shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverage for the balance of the period of the Contract or extension thereunder is in effect.

## **ARTICLE 12 – INDEMNIFICATION**

The CONSULTANT shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages. In addition, the CITY shall be entitled to attorney's fees and costs of defense, which the CITY, or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this project by the awarded proposer or its employees, agents, servants, partners, principals or subcontractors. Furthermore, the awarded proposer shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind of nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The awarded proposer expressly understands and agrees that any insurance protection required by the resulting agreement or otherwise provided by the awarded proposer shall cover the CITY its officers, employees, agents and instrumentalities and shall include claims for damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the CONSULTANT and persons employed by or utilized by the CONSULTANT in the performance of the contract.

## **ARTICLE 13 – SUCCESSORS AND ASSIGNS**

The CITY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the CITY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and the CONSULTANT.

## **ARTICLE 14 – REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Broward County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

## **ARTICLE 15 – CONFLICT OF INTEREST**

The CONSULTANT represents that it has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes). The CONSULTANT further represents that no person having any interest shall be employed for said performance.

The CONSULTANT shall promptly notify the CITY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the CONSULTANT. The CITY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notice by the CONSULTANT. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the CITY shall so state in the notice and CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CITY by the CONSULTANT under the terms of this Contract.

#### **ARTICLE 16 – EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time.

#### **ARTICLE 17 – DEBT**

The CONSULTANT shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

#### **ARTICLE 18 – DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to the CITY'S Representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the CITY under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will

be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the CITY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the CITY'S expense shall be and remain the CITY'S property and may be reproduced and reused at the discretion of the CITY.

The CITY and the CONSULTANT shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

#### **ARTICLE 19 – CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. Violation of this Article shall constitute a forfeiture of this Contract by CONSULTANT.

#### **ARTICLE 20 – ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The CITY shall have access to such books, records, and documents as required in the section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

#### **ARTICLE 21 – NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.



## **ARTICLE 22 – ENFORCEMENT COSTS**

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

## **ARTICLE 23 – AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY'S representative upon request.

## **ARTICLE 24 – SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

## **ARTICLE 25 – ENTIRETY OF CONTRACTUAL AGREEMENT**

The CITY and the CONSULTANT agree that this Contract together with the Exhibits hereto, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25 – Modification of Work. In the event of any conflict or inconsistency between this Contract and the provisions in the incorporated Exhibits, the terms of this Contract shall supersede and prevail over the terms in the Exhibits.

## **ARTICLE 26 – MODIFICATION OF SCOPE OF WORK**

The CITY reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the CITY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the CITY of any estimated change in the completion date, and (3) advise the CITY if the contemplated change shall effect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the CITY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the CITY'S decision to proceed with the change.

If the CITY elects to make the change, the CITY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and the City Manager, and if such amendment is in excess of \$25,000 it must also first be approved by the City Commission.

#### **ARTICLE 27 – WARRANTY**

CONSULTANT warrants that the services provided under this contract will be performed with that degree of skill and judgment normally exercised by recognized professional firms providing services of a similar nature. CONSULTANT does not guarantee any specific revenues or anticipated profits in connection with the services provided in this agreement but agrees to follow industry standards for rate making and to perform adequate tests to verify the validity of results.

#### **ARTICLE 28 – NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the City shall be mailed to:

Deputy Director-Finance  
City of Hollywood, Florida  
Public Utilities Department  
P.O. Box 229045  
Hollywood, FL 33022-9045

And if sent to the CONSULTANT shall be mailed to:


Jonathan Varnes  
Principal  
Lighthouse Utility Consulting  
5224 West SR 46, Suite 107  
Sanford, Florida 32771

**IN WITNESS WHEREOF**, the parties hereto have set their hands and official seals the day and year first above written.

City of Hollywood, a municipal Corporation of the State of Florida

ATTEST:

  
Patricia A. Cerny, MMC  
City Clerk

  
By: \_\_\_\_\_  
Peter Bober  
Mayor

Approved as to form and legality for the use and reliance of the City of Hollywood, Florida, only.

Approved by:   
Matthew Lalla, Director  
Financial Services

  
Jeffrey P. Sheffel *at*  
City Attorney

  
CONSULTANT  
Lighthouse Utility Consulting

WITNESSES:

Signature: 

Print Name: Angela Vanes

Signature: 

Print Name: Brad Mimms