

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of the 6 day of ^{re} ~~July~~ ^{August}, 2010, by and between City of Hollywood, a Municipal Corporation of the State of Florida, by and through its Commissioners, hereinafter the CITY, and Lighthouse Utility Consulting, whose principal office is located at 5224 West SR 46, Suite 107, Orlando, Florida 32771, hereinafter referred to as the CONSULTANT whose Federal I.D. number is 30-0526843.

WHEREAS, the City of Hollywood 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-4233-10-RD; and

WHEREAS, based on a recommendation of its City Manager, the City of Hollywood 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 provide consultation services as detailed above and as more specifically set forth in RFQ-4233-10-RD and based upon approved work orders:

The CONSULTANT'S Representative shall be:

Jonathan Varnes
Principal
Lighthouse Utility Consulting
5224 West SR 46, Suite 107
Orlando, 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 – SCHEDULE

The CONSULTANT shall commence services within thirty (30) days of the date of execution of this Agreement and shall expire five years from the date of this contract.

ARTICLE 3 – 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 workorder.
- 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 forty five (45) 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 workorder. 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 4 – 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 representation then said rates shall be adjusted accordingly.

ARTICLE 5 – 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 6 – 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 7 – 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 8 – 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 9 – 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 10 – INSURANCE REQUIREMENTS

The CONSULTANT shall not commence work under this Contract until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY, nor shall the CONSULTANT allow any Subcontractor to commence work on its sub-contract until all similar such insurance required of the Subcontractor has been obtained and approved.

CERTIFICATES OF INSURANCE, reflecting evidence of the required insurance, shall be filed with the Risk Manager prior to the commencement of the work. These Certificates shall contain a provision that coverage afforded under these policies will not be cancelled until at least thirty (30) days prior written notice has been given to the CITY. Policies shall be issued by companies authorized to do business under the laws of the State of Florida and shall have adequate Policyholders and Financial ratings in the latest ratings of A.M. Best and be part of the Florida Insurance Guarantee Association Act.

Insurance shall be in force until all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the Insurance Certificate 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 and extension thereunder is in effect. The CONSULTANT shall not continue to work pursuant to this Contract unless all required insurance remains in full force and effect.

REQUIRED INSURANCE

1. Commercial General Liability

Commercial General Liability Insurance to cover liability for bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and contractual. Coverage must be written on an occurrence basis, with no less than the following limits of liability:

- A. Single Limit Bodily Injury & Property Damage
 - 1. Each Occurrence \$300,000
 - 2. Annual Aggregate 600,000
- B. Personal Injury
 - Annual Aggregate \$300,000

2. Comprehensive Automobile Liability

Comprehensive Automobile Liability for all vehicles used in the performance of this Contract:

- A. Single Limit Bodily Injury & property Damage
 - 1 Each Occurrence \$300,000

Coverage shall include owned, hired and non-owned vehicles.

The City of Hollywood must be named as an additional insured for the Automobile and Commercial General Liability coverage.

3. Professional Liability

Professional Liability with limits not less than \$1,000,000.00. If coverage is provided on a claim made basis then coverage must be continued for the duration of this Contract and for not less than one (1) year thereafter, or in lieu of continuation, provide an "extended reporting clause" for one (1) year.

4. Worker's Compensation Insurance

Workers' Compensation Insurance shall be maintained during the life of this Contract to comply with statutory limits for all employees, and in the case any work is sublet, the CONSULTANT shall require any Subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONSULTANT. The CONSULTANT and his Subcontractors shall maintain during the life of this Contract Employer's Liability Insurance. The following must be maintained.

- | | | |
|----|-----------------------|------------------------|
| A. | Workers' Compensation | Statutory |
| B. | Employer's Liability | \$100,000 per accident |

The CITY reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

ARTICLE 11 – INDEMNIFICATION

Consultant shall defend, indemnify and hold harmless the CITY and its employees from and against damages and liability directly caused by the negligent actions or willful misconduct of the Consultant, its employees, consultants or agents, including reasonable attorney fees related thereto. The Consultant shall not be responsible for any damages or liability resulting, in whole or in part, from the negligence or willful misconduct of the CITY, its employees, consultants or agents or any third party.

ARTICLE 12 – 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 13 – 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 14 – 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 15 – 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 its 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 16 – 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 17 – 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 18 – 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 19 – 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 20 – 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 21 – 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 22 – 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 23 – 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, the 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 24 – 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 25 – 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 affect 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 26 – 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.

ARTICLE 27 – 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
Orlando, 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, FLORIDA, a
municipal corporation in the State of Florida

ATTEST:


Patricia A. Cerny, MMC
CITY CLERK

BY: 
for Peter Bober
MAYOR

APPROVED AS TO FORM & LEGALITY
For the use and reliance of the City of
Hollywood, Florida, only

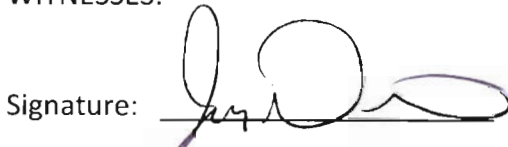

Jeffery P. Sheffel
CITY ATTORNEY


Approved as to Finance:


Matthew Lalla
Financial Services Director

ANNUAL WATER AND SEWER RATE CONSULTING SERVICE AGREEMENT WITH
LIGHTHOUSE UTILITY CONSULTING (FY 2010)

WITNESSES:

Signature: 
Print Name: Joan DelGaudio

Signature: 
Print Name: B. CRAIG TRUITT

CONSULTANT:

Lighthouse Utility Consulting

Signature: 
Jonathan Varnes