

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered into by and between The City of Leesburg, Florida ("City"), and Nick Lenoci Enterprises, Inc. ("Consultant"), a Florida corporation, each of whom are herein referred to individually as "Party" and severally as "Parties."

WHEREAS:

Consultant has expertise to which City wishes to gain access; and,

Consultant is willing to grant City access to its expertise; and,

City is willing to engage Consultant on the terms and conditions set forth herein; and,

Consultant is willing to be so engaged,

NOW THEREFORE in consideration of the foregoing and of the mutual promises set forth herein, and intending to be legally bound, the Parties agree as follows:

1. ENGAGEMENT

- 1.1 City hereby engages Consultant to render the consulting services described in Exhibit A of this Agreement – which is an integral part of this Agreement and which states further terms to which the Parties agree – and such other services as may be agreed to in writing by City and Consultant from time to time.
- 1.2 Consultant hereby accepts the engagement to provide consulting services to City on the terms and conditions set forth herein.

2. TERM

- 2.1 This Agreement shall come into force as of the lattermost date on which either Party executes it.
- 2.2 This Agreement shall continue until either:
 - 2.2.1 Consultant completes all services noted in Exhibit A of this Agreement; or,
 - 2.2.2 either Party terminates the Agreement per 2.3 below; or
 - 2.2.3 both Parties agree in writing to terminate the Agreement.
- 2.3 Either Party may terminate this Agreement by providing thirty (30) days written notice to other Party of intent to terminate Agreement.

3. COMPENSATION

- 3.1 If Consultant has earned fees from City under this Agreement, City agrees to pay Consultant in the manner and at the rates set forth in Exhibit B of this Agreement and which is an integral part of this Agreement and which states further terms to which the Parties agree.

- 3.2 Consultant shall submit written invoices for amounts due under this Agreement no more frequently than once per month.
- 3.3 City shall make payment to Consultant against such invoices within thirty (30) calendar days of receipt.

4. REPRESENTATIONS

Each Party represents that to the best of its knowledge:

- 4.1 it has no legally binding obligations inconsistent with the terms of this Agreement; and,
- 4.2 its performance of the obligations called for by this Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and,
- 4.3 it will not use in the performance of its responsibilities under this Agreement any confidential information or trade secrets of any other person or entity; and,
- 4.4 it has not entered into and will not enter into any agreement, whether oral or written, in conflict with this Agreement.

5. INDEMNIFICATION

- 5.1 To the extent permitted by law, City and Consultant will defend, indemnify and hold harmless the other, and its respective officers, agents and employees from and against all liabilities, claims, damages, losses and expenses, including costs and reasonable attorneys' fees, arising out of or resulting in whole or in part from the act or omissions of itself, its officers, agents and employees, made in connection with this Agreement. Nothing contained herein, however, shall constitute a waiver by City of its sovereign immunity in excess of the statutory waiver specified in the provisions of Section 768.28, Florida Statutes.
- 5.2 In claiming any indemnification hereunder, the indemnified Party shall provide the indemnifying Party with written notice of any claim which the indemnified Party believes falls within the scope of the foregoing indemnification obligations. The indemnified Party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim, and further provided that any settlement imposing liability or obligation on the indemnified Party shall not be final without such Party's written consent.

6. ATTORNEYS' FEES

Should either Party or any heir, personal representative, successor or assign of either Party resort to litigation to enforce this Agreement, the Party or any heir, personal representative, successor or assign of either Party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover his or their reasonable attorneys' fees and costs in such litigation from the Party against whom enforcement was sought, whether incurred at trial, in appellate proceedings, in any proceedings in bankruptcy or insolvency, or in any proceedings to collect or enforce a judgment obtained.

7. ENTIRE AGREEMENT

This Agreement contains the entire understanding and agreement between the Parties with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof. Each Party warrants for the benefit and reliance of the other that in entering into this Agreement, neither relied on any statement, promise, representation or agreement of the other which is not set forth specifically in this Agreement.

8. AMENDMENT

This Agreement may be amended only by a writing signed and dated by both Parties. It may not be amended verbally, by implication, by course of conduct, or otherwise than in writing as specified.

9. SEVERABILITY

If any term, condition or covenant of this Agreement is declared judicially to be invalid or unenforceable, then to the extent it is possible to do so without destroying the overall intent and effectiveness of this Agreement, the invalidated portion shall be severed and the remainder of this Agreement shall continue in full force and effect.

10. RIGHTS CUMULATIVE

The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either Party, whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive that Party's right to exercise any or all other rights and remedies.

11. NONWAIVER

Failure by either Party to enforce any right or remedy under this Agreement or to insist at all times on strict enforcement of each and every term of this Agreement shall not be deemed or construed as a waiver of the right at any subsequent time to enforce each and every provision of this Agreement, nor shall such failure be deemed or construed to be a modification of this Agreement by implication or course of conduct.

12. FORCE MAJEURE

Performance by either Party shall be excused if the failure of, or delay in, performance of any duty is caused by inclement weather, strikes or other labor strife, unavailability of necessary materials, or other causes beyond the control of the Party not performing its obligations hereunder, until such time as the cause of nonperformance has abated, after which a reasonable time shall be allowed for performance.

13. REMEDY FOR DEFAULT

- 13.1 If either Party believes the other Party to be in default of this Agreement, the non-defaulting Party shall provide written notice to Party alleged to be in default.
- 13.2 Upon receipt of written notification of alleged default of this Agreement per 13.1 above, the notified Party shall, within ten (10) business days, provide written response to notifying Party either:
- 13.2.1 demonstrating that Party is not in default of Agreement; or,
- 13.2.2 proposing a plan to cure the default.
- 13.3 If a plan is proposed under Section 13.2.2, the notifying Party, within five (5) days of receipt of the proposed plan, shall either accept or reject the proposed plan. If the proposed plan is rejected, the default shall not be deemed to be cured.

14. ASSIGNMENT

Neither Party may assign this Agreement without the express-written consent of the other Party which consent shall not be unreasonably withheld, conditioned, or delayed, except that City shall have the right to assign this Agreement pursuant to a governmental reorganization, without the consent of Consultant; except that in the case of such governmental reorganization, City shall give Consultant no less than sixty (60) days prior notice of the effectiveness of a governmental reorganization and the assignee of any such assignment shall take on all obligations of the assigning Party under this Agreement, without amendment, so that the non-assigning Party is entirely held harmless as to all effects of any governmental reorganization. Any assignees shall be subject to all terms and conditions of this Agreement after assignment. Any assignment of this Agreement shall be subject to the other Party's rights under this Agreement and any assignee shall continue to perform the assignor's obligations to the other Party under the terms and conditions of this Agreement, and such assignee shall agree in writing to be bound and abide by this Agreement. No assignment of this Agreement shall relieve a Party of its obligations under this Agreement.

15. COMPLIANCE WITH LAW

In fulfilling their responsibilities under this Agreement, the Parties agree to abide by all federal, state, and local laws, ordinances and regulations.

16. CONSULTANT NOT AUTHORIZED TO COMMIT

Although Consultant may engage in discussions with existing or potential providers of upstream wholesale Internet bandwidth, this Agreement is not authority for Consultant to act for City as its agent or to make commitments for City, and no obligation or undertaking entered into by Consultant, purportedly on behalf of the City, shall be binding on the City unless and until it has been approved by the City Commission at a public meeting where a quorum is present and the item in question is on the agenda for action or disposition.

17. DISPUTES

- 17.1 Any disputes arising from this Agreement which the Parties cannot settle amicably between themselves shall be submitted to arbitration as described in 17.2, 17.3 and 17.4 below for final settlement.
- 17.2 Such arbitration shall be undertaken by one arbitrator who is experienced in business law and who is mutually agreed upon by the Parties.
- 17.3 Such arbitration shall take place in Lake County, Florida.
- 17.4 Such arbitration shall be final and binding upon both Parties.
- 17.5 During such arbitration, the Parties shall continue to fulfill their obligations under this Agreement.

18. CONSULTANT TO MAINTAIN CONFIDENTIALITY

Consultant expressly agrees to not disclose to any other party any information from any master service agreements, customer orders or other vendor matters that City discloses to Consultant under this Agreement. Information that Consultant becomes aware of through independent sources without confidentiality restrictions shall be exempt from the foregoing nondisclosure restriction.

19. DELIVERY OF NOTICES

- 19.1 Any written notices required by this Agreement shall be considered delivered to the receiving Party:
 - 19.1.1 when presented if delivered in person by the notifying Party; or
 - 19.1.2 upon receipt of telephone confirmation if transmitted by facsimile; or
 - 19.1.3 one (1) business day after dispatch if transmitted by overnight courier service; or five (5) business days after dispatch if transmitted by United States Postal Service.
- 19.2 Any written notices required by this Agreement shall be addressed and delivered to:

CONSULTANT:

Nick Lenoci
6227 Greatwater Drive
Windermer, Florida 34786

phone: 407-909-9234
fax: n/a
email: Nlenoci1@cfl.rr.com

CITY:

Communications Manager
City of Leesburg
Post Office Box 490630
Leesburg, Florida 34749-0630

318 South Second Street
Leesburg, Florida 34748

phone: 352-728-9899
fax: 808-435-9451
email: Communications.Manager@
LeesburgFlorida.gov

20. GOVERNING LAW

This Agreement shall be construed in accordance with, and any actions arising hereunder shall be governed by, the laws of the State of Florida. Venue for any action or proceeding arising under this Agreement shall be in Lake County, Florida.

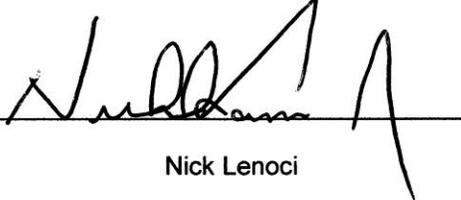
21. EXECUTION

The Parties have executed this Agreement in two original copies, City receiving one and Consultant receiving one.

22. HEADINGS FOR INFORMATION ONLY

The numbered heading phrases are for convenience only and shall not be considered part of this Agreement.

FOR CONSULTANT:



Nick Lenoci

2.11.13

date

FOR CITY:

David Knowles, Mayor

date

ATTESTED:

Betty M. Richardson, City Clerk

APPROVED AS TO FORM AND CONTENT:

Fred Morrison, City Attorney

EXHIBIT A

Services to be provided by Consultant to City

1. Review of City's existing contracts and orders for upstream wholesale Internet bandwidth.
2. Advice regarding upstream sources of wholesale Internet bandwidth.
3. Advice regarding prices to pay for upstream wholesale Internet bandwidth.
4. Advice regarding interconnections with upstream sources of wholesale Internet bandwidth.
5. Advice regarding City's discussions and/or negotiations with existing or potential providers of upstream wholesale Internet bandwidth.
6. At City's express direction, discussions and/or negotiations with existing or potential providers of upstream wholesale Internet bandwidth (see limitation of Consultant's authority to act on City's behalf stated in Section 16(c) in the body of this Agreement).
7. Written summaries of discussions and/or negotiations undertaken per item 6 immediately above, transmitted to City no less than twenty-four hours after the conclusion of any discussion and/or negotiation session.

EXHIBIT B Fee schedule

Consultant's fee shall be an amount equal to three months' of savings achieved on City's upstream wholesale Internet bandwidth costs as a direct and obvious result of Consultant's services to City under this Agreement.

Such savings shall be calculated using City's invoices from its upstream wholesale Internet bandwidth provider(s).

City's "before" upstream wholesale Internet bandwidth cost shall be considered as stated on first invoice City receives from its upstream wholesale Internet bandwidth provider following this Agreement's coming into force.

City's "after" upstream wholesale Internet bandwidth cost shall be considered as stated on the first three months' invoices for upstream wholesale Internet bandwidth after any pricing change City achieves as a result of Consultant's advice under this Agreement. In the event City increases – in comparison with the amount of upstream wholesale Internet bandwidth for which the "before" invoice was issued – the amount of upstream wholesale Internet bandwidth for which such "after" invoices are issued, such "after" invoice amount shall be prorated so as to reflect a theoretical invoice amount for the same amount of upstream wholesale Internet bandwidth as is reflected on the "before" invoice.

EXAMPLES

Example 1:

	<u>"Before" Invoice</u>	<u>"After" Invoices 1-3</u>
Bandwidth invoiced:	1 Gbps	1 Gbps
Amount invoiced:	\$10,000	\$8,000
Consultant's fee:	\$6,000 $((\$10,000 - \$8,000) \times 3)$	

Example 2:

	<u>"Before" Invoice</u>	<u>"After" Invoices 1-3</u>
Bandwidth invoiced:	1 Gbps	2 Gbps
Amount invoiced:	\$10,000	\$15,000
Consultant's fee:	\$7,500 $((\$10,000 - (\$15,000/2)) \times 3)$	

Example 3:

	<u>"Before" Invoice</u>	<u>"After" Invoices 1-2</u>	<u>"After" Invoice 3</u>
Bandwidth invoiced:	1 Gbps	1 Gbps	2 Gbps
Amount invoiced:	\$10,000	\$8,000	\$15,000
Consultant's fee:	\$6,500 $((\$10,000 - \$8,000) \times 2) + (\$10,000 - (\$15,000/2))$		