

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the ____ day of _____ in the year 2009, between The City of Leesburg, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY”), and **DOUG HANDLEY d/b/a UTILITY CONSULTING SERVICES** whose address is 9487 Silver Buttonwood Street, Orlando, Florida 32832 (hereinafter referred to as the “PROFESSIONAL”).

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. Services. The PROFESSIONAL shall perform the following services detailed in the attached **ATTACHMENT A SCOPE OF SERVICES**. Nothing herein shall limit the CITY's right to obtain proposals or services from other contractors for similar projects.

2. Labor and Materials. Not Applicable.

3. Insurance. The PROFESSIONAL will maintain throughout this Agreement the following insurance:

A. The PROFESSIONAL shall provide evidence of required minimum insurance by providing the CITY an ACORD or other Certificate of Insurance in forms acceptable to the Risk Manager for the City, prior to starting work, under the Agreement.

B. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least “A.”

C. The PROFESSIONAL shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.

D. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.

E. The required insurance shall not limit the liability of the PROFESSIONAL. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the PROFESSIONAL’S interests or liabilities, but are merely required minimums.

F. All liability insurance, except professional liability, shall be written on an occurrence basis.

G. The PROFESSIONAL waives its right of recovery against the CITY to the extent permitted by its insurance policies.

H. Insurance required of the PROFESSIONAL, or any other insurance of the PROFESSIONAL shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.

I. Except for workers' compensation and professional liability, the PROFESSIONAL'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.

J. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

**City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630**

K. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.

L. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.

M. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.

N. The PROFESSIONAL, at the discretion of the Risk manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the PROFESSIONAL'S liability coverage(s).

4. Indemnification. The PROFESSIONAL shall indemnify and hold harmless the CITY and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the PROFESSIONAL and other persons employed or utilized by the PROFESSIONAL in the performance of the contract.

5. Codes, Laws, and Regulations. PROFESSIONAL will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

6. Permits, Licenses, and Fees. PROFESSIONAL will obtain and pay for all permits and licenses required by law that are associated with the PROFESSIONAL's performance of the Scope of Services.

7. Access to Records. PROFESSIONAL will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all

invoiced amounts. Said records will be available for examination by the CITY during PROFESSIONAL's normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

8. Contingent Fees Prohibited. The PROFESSIONAL warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the PROFESSIONAL, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the PROFESSIONAL any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

9. Payment. CITY shall compensate PROFESSIONAL for their services in the following manner: **SEE ATTACHMENT "A"**.

10. Ownership of Documents. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the PROFESSIONAL (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the property of the PROFESSIONAL. Notwithstanding, the CITY shall have access to reproducible copies of such documents at no additional cost other than printing. All original documents shall be kept on file at the office of the PROFESSIONAL.

11. Independent Contractor. The PROFESSIONAL is an independent contractor and as such will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this agreement.

12. Assignment. Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

13. No Third Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than the PROFESSIONAL and the CITY.

14. Jurisdiction. The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

15. Term and Termination. The term of this Agreement shall be for an initial term, up through and including five (5) years from date of execution, or when all services for Phase I and II detailed in the Scope of Services Document have been provided, whichever occurs first. All or part of this Agreement may be terminated by the CITY for its convenience on fifteen (15)

days written notice to the PROFESSIONAL. In such event, the PROFESSIONAL will be entitled to compensation for services competently performed up to the date of termination.

16. Nonappropriation. The PROFESSIONAL understands and agrees that this Contract is subject to the availability of funds to the CITY to purchase the specified products/services. As used herein, a “nonappropriation” shall be defined as an occurrence wherein the CITY, in any fiscal period, does not allocate funds in its budget for the purchase of the specified products/services or other amounts owed pursuant to this Contract, from the source of funding which the CITY anticipates using to pay its obligations hereunder, and the CITY has not other funds, from sources other than ad valorem taxes, which it deems to be available to pay its obligations under this Contract. The CITY may terminate this Contract, with no further liability to the PROFESSIONAL, effective the first day of a fiscal period provided that:

- (a) A nonappropriation has occurred, and
- (b) The CITY has provided the PROFESSIONAL with written notice of termination of less than fifteen (15) days before the proposed termination date.
- (c) In the event of any termination, the PROFESSIONAL shall be paid for all services rendered and expenses incurred to the effective date of the termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

Upon the occurrence of such nonappropriation the CITY shall not be obligated for payment for any fiscal period for which funds have not been appropriated.

17. Contact Person. The primary contact person under this Agreement for the PROFESSIONAL shall be Doug Handley. The primary contact person under this Agreement for the CITY shall be Paul Kalv, Electric Utility Director.

18. Approval of Personnel. The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of PROFESSIONAL pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of PROFESSIONAL pursuant to this Agreement, CITY may require PROFESSIONAL assign a different person or persons be designated to be the contact person or to perform the PROFESSIONAL services hereunder.

19. Disclosure of Conflict. The PROFESSIONAL has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the PROFESSIONAL and his duties under this Agreement.

20. Authority to Obligate. Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney

"PROFESSIONAL"

DOUG HANDLEY UTILITY CONSULTING
SERVICES

By: Doug Handley

Printed: Doug Handley

Its: Owner
(Title)

Date: May 29, 2009

Doug Handley
Utility Consulting Services
9487 Silver Buttonwood Street
Orlando, Florida 32832

May 19, 2009

Mr. Paul Kalv
Director, Electric Department
City of Leesburg
2010 Griffin Road
Leesburg, FL 34748

Subject: **Proposed Electric Rate Study**

Dear Paul:

The City of Leesburg ("City") requires an electric rate study in order to ensure retail electric rates properly reflect the cost to serve the various customer classes. On behalf of the City, you have asked me to submit a proposal to perform an electric rate study for the City. As you know, I have been performing electric rate studies for the past 25 years, including studies for Leesburg in 2003 and earlier and more recently for Danville, Virginia. For over 24 years, I worked with the consulting firm of R. W. Beck, Inc. until last year when I formed my own firm, Utility Consulting Services.

Attachment A to this letter represents the proposed scope of services, which also includes the estimated budget and schedule for the study. If the proposed arrangement is satisfactory to the City, please have the appropriate official indicate approval and return a copy to me, which will also serve as a notice to proceed.

I appreciate the opportunity to be considered by the City for this study and, if approved, look forward to working with you again.

Sincerely,



Doug Handley
Utility Consulting Services

APPROVED FOR THE CITY OF LEESBURG, FLORIDA:

Title: _____
Date: _____

GENERAL

In order to ensure electric retail rates properly reflect the cost to serve the various customer classes, the City of Leesburg (“City”) requires an electric rate study. The services will be provided to the City by Doug Handley of Utility Consulting Services (“Consultant”). The study will address the level of the City’s rates relative to its costs and the allocation of costs between rate classes. Other services will include a review of the bulk power cost adjustment methodology and general consultation and presentations as authorized by the City. Given that the City may be required to submit this study, among other things, to the Florida Public Service Commission (the “PSC”) for approval, and to minimize costs, the electric rate study will be prepared using and relying on the “Ocala Test” methodology developed by the PSC, data to be provided by the City and other readily available generic data and information. The electric rate study will utilize one fiscal year, or “test year”, for analyzing and projecting revenues and expenses.

SERVICES TO BE PROVIDED BY THE CONSULTANT

The scope of services will be performed by the Consultant in two phases. Phase I will result in certain preliminary analyses and assessments. Based on the review of the results of Phase I, the City may choose to discontinue the study at that time. Otherwise, the Consultant will perform the Phase II tasks in this scope services, resulting in a final report for the electric rate study.

Phase I will include the development of the projected test year annual revenue requirements and revenues from existing rates and a comparison of the existing rates to other nearby utilities. The revenue requirements will be based on the City’s preliminary budget for a test year designated as the twelve months ending September 30, 2010. The Consultant will prepare rate comparisons based on rate schedules available on public web sites for other selected utilities. Phase I will also include an evaluation of relative rate levels between classes using the “Ocala test” methodology. The results of the Phase I analysis will be summarized in a preliminary results report and reviewed in a meeting with City staff. In that meeting, the City will specify the level of rate adjustments by rate class to be targeted by the Consultant in Phase II.

Phase II will include the redesign of existing rates as appropriate, the comparison of existing and proposed rates and a comparison to the rates charged by the other selected public and private electric utilities in the State. The results of Phase II will be summarized in a final report that will include Consultant's findings and conclusions.

PHASE I

The specific scope of services for Phase I includes the following tasks:

1. Review and utilize the City's preliminary estimates of the operating and capital budgets for fiscal year ending September 30, 2010 (the "test year"). The City's staff may prepare the data for this task based on an approach similar to the normal budget preparation process for the upcoming fiscal year or make adjustments to the current year's budgets for known or anticipated changes to approximate the test year revenue requirements.
2. Review and utilize the City's projections of electric requirements, sales, and revenues developed for the test year. The City will document the assumptions used for these projections and present the results in a format to be prescribed by the Consultant.
3. Prepare a comparison of the existing rates for electric service to the existing published rates of other selected public and private utility systems in the State based on rate schedules available on public web sites using a spreadsheet format that presents monthly bill amounts for a representative range of typical usage levels.
4. Participate in a meeting with City staff to evaluate progress of work on preliminary results, including discussions, as necessary, regarding format of data and analyses and adjustments to the schedule or scope of work.
5. Review and utilize the City's historical records of electric consumption, sales and revenues, to the extent appropriate, utilizing information to be prepared by the City, so as to provide a reasonably accurate distribution profile of existing usage. These usage profiles will be used as supporting detail for the test year revenues from existing rates and to estimate the annual effect of changes resulting from any proposed new rates.
6. Prepare a summary of the test year projections of cost of bulk power supply, existing base rate revenues and revenues from the application of the Bulk Power Cost Adjustment Clause.
7. Prepare a comparison of the test year estimated revenues from existing rates to the estimated test year revenue requirements to provide an indication of the overall average system rate increase or decrease.
8. Apply the provisions of the PSC sanctioned "Ocala Test" to determine the extent of any inter-class subsidies.
9. Prepare a letter report setting forth the results of the Phase I activities.
10. Provide general consultation and participate in a meeting to present the results of the Phase I activities to City staff. City staff will review the Phase I results with decision-makers in the City and notify the Consultant whether or not the Consultant should proceed with Phase II.

PHASE II

The specific scope of services for Phase II includes the following tasks:

1. Make any revisions to the Phase I test year revenue requirements and the Phase II scope of services based on guidance to be provided by the City.
2. Develop revenue requirements for the various customer classes based on the results of the PSC sanctioned “Ocala Test” and the guidance provided by the City.
3. Design traditional rates only to recover the revenue requirements by rate class.
4. Prepare recommendations for redesigning the Bulk Power Cost Adjustment Clause and analyze the effects of any recommended changes.
5. Prepare a comparison of the proposed rates for electric service with existing published rates of other public and private electric utility systems in the State.
6. Prepare a draft report summarizing the results of Phase II.
7. Review draft report in a meeting with City staff and make changes to report as considered appropriate.
8. Prepare and submit to the City ten (10) bound copies of final report, including the findings and recommendations of the Consultant.
9. Present the results of the study to the City.

SERVICES TO BE FURNISHED BY THE CITY

The City shall assist the Consultant by compiling, furnishing and making the following available at no cost to the Consultant. To minimize costs and expedite data transfer, where appropriate, all data and analyses shall be provided in computer readable form by email.

1. Copies of all existing City rate schedules filed with the PSC, City ordinances and resolutions related to the electric rates and other data that may be requested by the Consultant as required to complete the work.
2. Copies of rate schedules of other public and private utilities in the State for comparison to the City and other public published data applicable to the rate study that may be more readily available to the City.
3. Services of personnel of the City as required to collect and compile data and to perform certain analytical tasks as requested by the Consultant.
4. Services as may be required of the City to meet with and advise the Consultant regarding the results of the study and guidance as needed for the analysis and design of proposed rates.

5. All legal services and opinions as required in connection with the work, including preparation of any rate ordinance revisions and any PSC filings.

ESTIMATED COST

Based on the scope of services herein, it is estimated that the total cost of the electric rate study is \$50,000.00. The estimated cost for Phase I is \$25,000.00. Upon approval of Phase I by the City, the Consultant will proceed with Phase I. The cost of Phase II is currently estimated to be an additional \$25,000.00. This estimate and the above scope of services for Phase II may be revised by mutual agreement between the City and the Consultant based on the results of Phase I. The Consultant will not proceed with Phase II until Phase II has been approved by the City.

The City will be billed monthly based on actual hours by the Consultant, plus reimbursable expenses related to the work. The Consultant's billing rates will be \$200.00 per hour for the first 40 hours per month and \$220.00 per hour for any additional hours per month.

SCHEDULE

Based on timely receipt of data to be provided by the City and coordinated meetings with the City, it is anticipated that the study will be completed by September 2009. The schedule may be modified by agreement to meet the needs of the City and Consultant and to minimize costs.

ADDITIONAL SERVICES

To the extent the City desires or requires additional studies or analyses not specifically set forth herein, the Consultant may perform such services at the written direction of the City as additional services. Such additional services will be in addition to those stated herein and will be compensated for separately on the same basis of payment specified herein. Such additional services may include, but not be limited to, (a) projections of revenues and costs beyond the test year, (b) additional meetings or presentations, with the City or PSC, (c) the development or significant modification of analyses or data that are to be provided by the City as set forth above, (d) development of rates for new rate classes or significantly redefined rate classes, (e) development of special rates, such as time-of-use, stand by, interruptible service, and (f) review or development of miscellaneous service charges or other fees and policies.