

**AGREEMENT FOR PROFESSIONAL SERVICES**

This **AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky, created pursuant to KRS Chapter 67A (hereinafter the "LFUCG") and **MILLER WELLS PLLC**, acting by and through Mason L. Miller, Miller Wells PLLC, 300 E. Main Street, Suite 360, Lexington, Kentucky 40507 (hereinafter "Firm").

**WITNESSETH:**

**WHEREAS**, the LFUCG's current franchise agreement with Kentucky-American Water Company has not been substantially modified in almost 20 years; and

**WHEREAS**, the above franchise agreement is set to expire in May 2015; and

**WHEREAS**, franchises are of great value to the utility and to the community at large; and

**WHEREAS**, there are a number of complex issues involved in developing a new long-term water utility franchise, including negotiating the terms of the franchise with the incumbent utility; and

**WHEREAS**, the LFUCG from time-to-time utilizes outside expertise to assist it in franchise issues, including negotiations; and

**WHEREAS**, Miller Wells, PLLC and Mason Miller have expertise in negotiating complex contracts and an understanding of franchise-related law and are well qualified to assist LFUCG with developing a new water utility franchise; and

**WHEREAS**, the LFUCG wishes to retain the services of the Firm and Mason L. Miller, attorney at law, to develop a new water utility franchise agreement, including negotiating the franchise terms; and

**WHEREAS**, these services will be of significant value and benefit to LFUCG.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants and conditions contained herein, the LFUCG and the Firm mutually agree as follows:

**I. EMPLOYMENT OF THE FIRM**

The LFUCG does hereby engage the Firm, and the Firm does hereby accept the engagement in accordance with the covenants and conditions contained herein.

**II. SCOPE OF SERVICES**

The Firm agrees to provide professional services in accordance with the following terms and conditions:

**2.1. Scope of Services.** The Firm, primarily through the services of Mason L. Miller, and secondarily through other attorneys as required and approved by LFUCG and the Firm, under the direction and at the request of the Mayor of the Lexington-Fayette Urban County Government (the "Mayor") and such of his assistants as he may designate, agree to render professional services regarding the franchise negotiation process involving LFUCG and the existing incumbent water utility franchisee, Kentucky-American Water Company, to be undertaken in accordance with applicable state law.

The Services to be rendered shall be at the direction of the Mayor and/or his designated assistants and shall include the following:

- a. Consult with the Mayor, the Commissioner of Law and such other of the Mayor's assistants as he may designate, regarding preparation for, and the

- conduct of, water franchise negotiations and the drafting of a new water utility franchise ordinance or resolution and related agreement;
- b. Develop negotiation positions and proposals including LFUCG goals and objectives and the terms of the proposed franchise;
  - c. Act as leader of the LFUCG water utility franchise negotiating team, under the direction of the Mayor and/or his designated assistants;
  - d. Develop negotiating plans and strategies including recommendations of the most appropriate course of action to accomplish LFUCG goals;
  - e. Provide updates to the Urban County Council upon request of the Mayor;
  - f. Perform any other task which is reasonably necessary to the completion of the water utility franchise negotiation process and a new franchise agreement.
  - g. In the event that there is a future administrative or judicial action related to the above services, the Firm agrees to assist LFUCG upon request, subject to the supervision of the Commissioner of Law. It is understood that such services will be billed outside "Section 3.1 – Payments" at the Firm's standard rates not to exceed \$210.00 per hour;

### **III. PAYMENT FOR SERVICES**

#### **3.1. Payment for Services.**

**A. Total Payment.** In consideration of the Firm's performance of the services described herein, the LFUCG agrees to pay the sum of \$210 per hour for work performed by partners of the Firm, plus reasonable expenses as determined pursuant to LFUCG's reimbursement policies and appropriate forms. It is understood that Mr. Miller may utilize the

services of associate attorneys to assist them during these negotiations. LFUCG agrees to pay the sum of \$175 per hour for work performed by associate attorneys, plus reasonable expenses as determined pursuant to LFUCG's reimbursement policies and appropriate forms. The total compensation provided to the Firm shall not exceed \$45,000 for the entirety of the services to be provided.

**B. Billing Increments.** All invoices for professional time shall be billed in increments of .10 hours.

**C. Computer Research Charges.** The Firm agrees that prior to conducting computerized legal research that it will consult with the Commissioner of Law to determine if said research can be performed through the Law Department's existing computer research plan.

**D. Partial Payment.** The LFUCG will make payments to the Firm for services rendered. The Firm shall submit monthly invoices to the LFUCG and the LFUCG shall make payment to the Firm within thirty (30) days after receipt of each invoice. Invoices should contain adequate supporting documentation including, but not limited to, the period the service covers, a detailed description of the services performed, detail of hours worked and the applicable hourly rate, and a summary of amount billed to date and amount of current invoice. Receipts or detailed descriptions for out-of-pocket expenses claimed must accompany each invoice.

**E. Legal Work by LFUCG Department of Law.** Should legal opinions be required during negotiations, any legal opinions shall be provided by the Commissioner of Law or designated LFUCG legal staff, unless otherwise requested by LFUCG. Mason L. Miller, attorney at law, shall consult with the Commissioner of Law regarding the substance of such legal opinions if requested.

**F. Efficient Transmission of Documents.** The Firm agrees that it will utilize electronic transmission of documents whenever possible to avoid facsimile or copying charges.

**G. Photocopy Charges.** The Firm agrees that it will charge no more than 10 cents per page for black and white photocopies of documents and will use color copying only when necessary during negotiations.

#### **IV. MISCELLANEOUS**

**4.1. Non-discrimination.** The Firm agrees that it will not discriminate against any of its employees or applicants for employment because of their race, color, age, religion, sex, or national origin and agrees to abide by all federal and state laws regarding non-discrimination. Any violation of such provisions shall constitute a material breach of this Agreement.

**4.2. Indemnification; Hold Harmless.** The Firm hereby covenants and agrees to indemnify and hold harmless the LFUCG, individually and collectively from all fines, suits, claims, demands, actions, costs, obligations, attorney fees, or liability of any kind arising solely out of the negligent actions of the Firm.

**4.3. Ownership of Documents.** All documents which are obtained or prepared in the performance of this Agreement and/or pertaining to any of the matters with respect to which the Firm is providing services for the LFUCG, are to be and will remain the property of the LFUCG. Upon request after the termination or expiration of this Agreement, the Firm shall surrender to the LFUCG all reports, memoranda, correspondence, files, forms, contracts, documents, estimates, field notes, investigations, studies and other data and other materials (including all copies thereof). This paragraph shall survive the expiration or termination of this Agreement. The Firm may temporarily retain the reproducible materials described above and prepare copies of any of these documents provided the copies are produced at the Firm's own expense, and a

copy of the final contracts negotiated pursuant to this Agreement will be provided to the Firm at LFUCG's expense.

**4.4. Assignment of Contract.** This Agreement shall not be assignable in whole or in part without the written consent of the parties hereto, and it shall extend to and be binding upon, the heirs, administrators, executors and assigns of the parties hereto.

**4.5. Independent Contractor.** The retention of and acceptance by the Firm for the rendering of the services agreed herein shall be for the Firm, acting as an independent contractor to the LFUCG.

## V. CURTAILMENT AND TERMINATION

**5.1. Curtailment or Termination of Services.** The LFUCG and the Firm hereby agree to the full performance of the covenants contained herein. The LFUCG reserves the right, at its discretion, to immediately terminate or curtail the services provided pursuant to this Agreement for documented cause, including but not limited to misfeasance, malfeasance, or non-performance of the Agreement by the Firm.

**A.** In the event the LFUCG shall terminate or curtail the services or any part of the services of the Agreement herein provided for cause, the LFUCG shall notify the Firm in writing and the Firm shall discontinue work under this Agreement immediately upon receipt of such notice.

**B.** Either party to this Agreement may terminate this Agreement without cause upon thirty (30) days written notice. During the thirty day notice period, the Firm shall faithfully carry out its duties under this Agreement to facilitate the negotiation of the franchise referenced herein. Subject to the provisions of all paragraphs and subparagraphs of Section 3.1, the Firm shall receive compensation in full for services performed to the date of such termination or

curtailment. The LFUCG shall make this final payment within thirty (30) days after the Firm has delivered the last of any partially completed documents, together with any records that may be required to determine the amount due.

**5.2. Term of Agreement.** This Agreement shall be effective upon execution by the Mayor, and shall remain in force for twelve months, or upon completion of the negotiation process and execution of the franchise, whichever period is longer.

**5.3. Acknowledgements.**

**A.** This Agreement contains all the understandings between the parties. It is represented and understood by the parties that the “Whereas” clauses preceding the Terms and Conditions part herein, are an integral part of this Agreement. This Agreement may not be varied, altered, or modified in any way by any party, except by written instrument signed by both appearing parties.

**B.** In the event that any provision or portions of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

**C.** This Agreement has been made in and shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Time is of the essence.

**D.** The parties agree that all discussions, reports, memoranda, correspondence, files, forms, contracts, documents, estimates, field notes, investigations, studies and other data shall remain confidential to the fullest extent permitted by law and the Firm further specifically agrees to make no public comments about the services being rendered pursuant to this Agreement except as directed by the Mayor or his designated assistants.

E. The parties hereto agree that any suit, action or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, (a) in the courts of the Commonwealth of Kentucky situated in Lexington, Fayette County, Kentucky or (b) the United States District Court for the Eastern District of Kentucky, Lexington Division, and the parties hereby submit to the jurisdiction of such courts for the purpose of any such suit, action, proceeding, or judgment and waive any other preferential jurisdiction by reason of domicile. The parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or related to this Agreement brought in the courts of the Commonwealth of Kentucky or the United States District Court for the Eastern District of Kentucky, Lexington Division, and also hereby irrevocably waive any claim that any such suit, action, or proceeding brought in any one of the above-described courts has been brought in an inconvenient forum.

F. It is agreed that the Firm reserves the right to continue to represent or to undertake to represent existing or new clients in any matter that is not substantially related to the Firm's work for LFUCG even if the interests of such clients in those other matters are directly adverse to LFUCG, including litigation in which LFUCG or its officers or related entities are parties. The Firm agrees, however, that the prospective consent to conflicting representation reflected in the preceding sentence shall not apply in any instance where as the result of the Firm's representation of LFUCG, the Firm has obtained sensitive, proprietary or otherwise confidential information that, if known to any such other client of the Firm, could be used in any such other matter by such client to the material disadvantage of LFUCG and/or any of its individual officers or the entities represented by those officers or agents.



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date first above written.

MILLER WELLS PLLC

By: \_\_\_\_\_  
MASON L. MILLER

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

By: \_\_\_\_\_  
JIM GRAY, MAYOR

WITNESS:

\_\_\_\_\_  
MEREDITH NELSON, COUNCIL CLERK

DATE: \_\_\_\_\_