

AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT is made as of the 2 day of August in the year 2010, between **THE CITY OF LEESBURG, FLORIDA**, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the "CITY"), and **PROGRESS ENERGY FLORIDA, INC.** whose address is 3300 Exchange Place, Lake Mary, Florida 32746 (hereinafter referred to as the "CONTRACTOR").

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 CONTRACTOR shall perform the following services: **SEE EXHIBITS "A & B"**. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for similar projects. The services to be performed under this Agreement shall not exceed a total price of \$169,500.00. In addition to this amount, the CITY is including an additional \$21,000.00 as contingency funds for use by the CITY. This amount is to be used by the CITY for any additional work or changes for allowances to the CONTRACTOR for providing 36 inch (36") casing and concrete backfill, if required. This contingency fund is not available to the CONTRACTOR unless the addition or change is specifically requested and approved by the CITY, in writing. The cost of the services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price. Said price includes all labor, equipment and materials needed to complete the project as described herein.

2. Labor and Materials. All work will be done in a competent and workmanlike manner, using quality, new materials. CONTRACTOR shall guarantee all materials and workmanship furnished under this Agreement for a period of 365 days from completion.

The CONTRACTOR's warranty excludes remedy for damage or defect caused by: (1) abuse; (2) modifications not executed by the CONTRACTOR; (3) improper or insufficient maintenance; or (4) normal wear and tear and normal usage.

3. Insurance. The CITY agrees that CONTRACTOR shall be allowed to satisfy all its insurance requirements by self-insurance.

A. The original of each such policy of insurance, or a complete duplicate, shall be delivered to the CITY by CONTRACTOR prior to starting work, together with evidence that the premiums have been paid.

B. The CONTRACTOR 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.

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

i. **Comprehensive General Liability** - The CONTRACTOR shall provide Commercial General Liability coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies of the Insurance Services Office (ISO). The Commercial General Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for bodily and personal injury and property damage liability for premises, operations, products and completed operations*, independent contractors, contractual liability covering the agreement, contract or lease, broad form property damage coverages, and property damage resulting from explosion, collapse or underground exposures (x,c,u).

* For remodeling and construction projects, the CONTRACTOR shall purchase and maintain products and completed operations coverage for a minimum of three (3) years beyond the CITY'S acceptance of the project.

ii. **Business Automobile Liability** - The CONTRACTOR shall purchase and maintain Business Automobile Liability coverage on forms no more restrictive than the latest editions of the Business Automobile Liability policies of the Insurance Services Office (ISO). The Business Automobile Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for claims for bodily injury and property damage arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned and hired vehicles, and employee non-ownership use.

iii. **Workers' Compensation** - The CONTRACTOR shall purchase and maintain Workers' Compensation insurance for all workers' compensation obligations imposed by state law and with employers liability limits of at least \$100,000 each accident and \$100,000 each employee with \$500,000 policy limit for disease.

CONTRACTORS exempt from maintaining Workers' Compensation insurance must provide a valid certificate of exemption issued by the State of Florida.

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

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

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

G. Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR 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.

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

I. 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**

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

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

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

M. Property Insurance. Notwithstanding anything to the contrary, CITY shall procure and maintain property insurance for the full replacement cost of the project. CITY agrees that all rights of subrogation shall be waived by the insurer against CONTRACTOR, and of its subcontractors, and the sub-subcontractors, consultants, agents and employees of any of them, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant this paragraph.

4. Indemnification. The CONTRACTOR shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Agreement. Provided however that the CONTRACTOR shall not be obligated to indemnify and hold the CITY harmless from any losses arising from the negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees..

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

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

7. Access to Records. CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR for their services in the following manner: **SEE EXHIBIT "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 CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the CITY'S use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

11. Independent Contractor. The CONTRACTOR agrees that he or she is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONTRACTOR. CONTRACTOR 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. The CONTRACTOR shall be solely and primarily responsible for his and her acts during the performance of 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 CONTRACTOR and the CITY.

14. Limitations. Notwithstanding anything to the contrary, neither party shall be responsible or held liable to the other party for any indirect, incidental, special or consequential damages of any nature whatsoever arising out of or relating to this Agreement or the project, all such claims being expressly waived by the parties. Further, notwithstanding anything herein to the contrary, CONTRACTOR's total liability to CITY arising out of or relating to this Agreement shall be limited to the maximum cumulative amount equal to the Contract Price, plus insurance proceeds actually paid under the policies required hereunder.

15. Hazardous Materials. CITY acknowledges and agrees that CONTRACTOR shall have no liability arising out of or relating to any preexisting hazardous materials or substances at the project site. Further, if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the CONTRACTOR, CONTRACTOR shall, upon recognizing the condition, immediately stop its performance of the work in the affected area and report the condition to the CITY in writing. CITY shall verify the presence or absence of the material or substance reported by the CONTRACTOR and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. When the material or substance has been rendered harmless, CONTRACTOR's work in the affected area shall resume upon written agreement of the CITY and CONTRACTOR. CONTRACTOR's time and cost of performance shall be equitably adjusted in the amount of the CONTRACTOR's reasonable additional costs of shut-down, delay and start-up.

16. Changed Conditions. Notwithstanding anything herein to the contrary, if conditions are encountered at the Project site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in this Agreement or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Agreement, then CONTRACTOR shall provide CITY with prompt written notice thereof before conditions are disturbed. CITY shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the work, CITY will acknowledge and agree to an equitable adjustment to the cost and/or time of performance for such work.

17. 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.

18. Term and Termination. The term of this Agreement shall be for a period of one (1) year or until the terms and conditions of this Agreement, including, but not limited to, its

Scope of Services, have been completed, whichever occurs first, as determined by the CITY. Work shall commence within ten (10) calendar days after CITY issues a Notice to Proceed (NTP). All services to be rendered by the CONTRACTOR as specified in the Contract Documents shall be completed within 45 calendar days of receiving the NTP. All or part of this Agreement may be terminated by the CITY for its convenience on fifteen (15) days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently performed up to the date of termination.

19. Nonappropriation. The CONTRACTOR 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 no other funds, from sources another 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 CONTRACTOR, effective the first day of a fiscal period provided that:

- (a) A nonappropriation has occurred, and
- (b) The CITY has provided the CONTRACTOR with written notice of termination, not less than fifteen (15) days before the proposed termination date.

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.

20. Contact Person. The primary contact person under this Agreement for the CONTRACTOR shall be COLLIER JONES. The primary contact person under this Agreement for the CITY shall be RICHARD ADKINS.

21. Approval of Personnel. The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of CONTRACTOR 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 CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

22. Disclosure of Conflict. The CONTRACTOR 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 CONTRACTOR 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/Commissioner

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

PROGRESS ENERGY FLORIDA, INC.

By: Bobby R. Burgess

Printed: Bobby R. Burgess

Its: Gen. Manager Trans. + Const.

Date: 8/2/10

EXHIBIT "A"

SCOPE OF SERVICES

- I. **Work.** CONTRACTOR shall perform work in accordance with the Progress Energy Proposal dated June 23, 2010. Furnish all materials, equipment, tools, labor and supervision necessary to complete the Picciola Road Relocation of City of Leesburg Overhead Distribution as outlined in the above referenced Progress Energy Proposal dated June 23, 2010.
- II. **Technical Specifications.** Technical specifications for this project are identified in Progress Energy Proposal dated June 23, 2010, which are incorporated by reference and made a part hereof.
- III. **General Conditions.** The General Terms and Conditions for this project are identified in Progress Energy Proposal dated June 23, 2010, which are incorporated by reference and made a part hereof.
- IV. **Supplement Conditions.** Supplemental Conditions, for this project are identified in Progress Energy Proposal dated June 23, 2010, which are incorporated by reference and made a part hereof.
- V. **Addenda.** None
- VI. **Method of Payment** – Payment on this project will be made on a basis following inspection and acceptance of the work by the City.

All invoices shall contain the purchase order number, date and location of delivery or service, and confirmation of acceptance of the goods or services by the appropriate City representative. Failure to submit invoices in the prescribed manner will delay payment.

Payments shall be tendered in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes.

EXHIBIT "B"
SCOPE OF SERVICES

Progress Energy Proposal dated June 23, 2010 (following two pages).



June 23, 2010

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

Reference: Picciola Rd Relocation of City of Leesburg Overhead Distribution

Dear Mr. Kalv:

Progress Energy is pleased to provide The City of Leesburg with the following proposal to Engineer, Procure, and Construct the relocation of the existing City of Leesburg owned overhead feeder associated with the rebuilding of the Picciola Rd. Bridge per the following Project Description and Scope of Work.

Project Description: Progress Energy will provide all engineering, labor, supervision, equipment, and material required to relocate 7 spans of overhead 795 to 7 concrete poles, 6 of which are self supporting engineered concrete poles and removal of the old section upon completion. Project boundaries are from Sable Palm Drive to Lake Utility Rd.

Scope of Work:

1. Provide Complete Professional Engineering Services.
2. Provide required MOT.
3. Furnish and install 6 - 60 ft self supporting concrete poles and one 55 ft City of Leesburg supplied concrete pole.
4. Frame all poles for Vertical construction.
5. Furnish and install # 57 stone rock back fill.
6. Provide 795 AAC with a 4/0 ACSR neutral totaling approximately 910 ft per conductor.
7. Energize new section of line.
8. Strip out and remove old poles and conductor.
9. Provide any required re-staking should any poles need to be moved to adjust presently proposed angles.
10. All required crane cost included in proposal.
11. Provision for Cable TV included in design. The City of Leesburg to coordinate with the provider.

Anticipated Schedule is as follows:

Project Award	June 28
Order Self Supporting poles	June 28
Receive Poles	July 26
Construction CMI	July 26
Completion of Construction	August 13

Progress Energy will provide all necessary Labor, Equipment, and Materials to complete all work as described above for lump sum price of **\$169,500.00**

Because this project has not yet been professionally engineered, we are requesting a **\$3,500.00** allowance per location to provide 36" casing and concrete backfill where required.

Progress Energy appreciates the opportunity to submit this proposal for the above outlined services and looks forward to working with you in the future. Please feel free to contact me any time to discuss this proposal.

Sincerely
Progress Energy

Collier W. Jones

Collier W. Jones
Project Leader
T&D Services