

## **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_ in the year 2012, between the **CITY OF LEESBURG**, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY”), and **BELLOMO-HERBERT AND COMPANY, INC.** whose address is 833 Highland Avenue, Suite 201, Orlando Florida 34803 (hereinafter referred to as the “PROFESSIONAL”).

**WHEREAS**, the PROFESSIONAL is performing engineering design work on Main Street for the Greater Leesburg Community Redevelopment Agency (GLCRA) under an agreement executed between the GLCRA and PROFESSIONAL;

**WHEREAS**, the Main Street Streetscape construction will require the relocation of City owned utilities. The utility relocation is the responsibility of the owning utility and not the GLCRA.

**WHEREAS**, The CITY enters into this Agreement for utility relocation design with the PROFESSIONAL as a separate Agreement from the Agreement between the GLCRA and 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 design services detailed in EXHIBIT “A”: Nothing herein shall limit the CITY's right to obtain proposals or services from other contractors for similar projects.
2. **Compensation and Payment.** The PROFESSIONAL shall be compensated for the services in an amount not to exceed \$40,147.00. Payment will be made in accordance with EXHIBIT “A”. 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 design as described herein.
3. **Labor and Materials.** Not Applicable.
4. **Insurance Requirements:**
  - 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 works' 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).

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

**a. Comprehensive General Liability**

- i. The PROFESSIONAL shall purchase and maintain 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 coverage, and property damage resulting from explosion, collapse or underground exposures (x,c,u).
- ii. For remodeling and construction projects, the PROFESSIONAL shall purchase and maintain products and completed operations coverage for a minimum of three (3) years beyond the CITY'S acceptance of the project.

**b. Professional Liability/Malpractice/Errors or Omissions Insurance**

- i. The PROFESSIONAL shall purchase and maintain Professional Liability or Malpractice or Errors or Omissions insurance with minimum limits of \$1,000,000 per occurrence combined single limit.
- ii. If a claims-made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims-made coverage, unless the prior policy was extended indefinitely to cover prior acts.
- iii. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of the claims-made coverage.

**c. Business Automobile Liability**

- i. The PROFESSIONAL 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.

**d. Workers' Compensation**

- i. The PROFESSIONAL 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.
- ii. PROFESSIONALS exempt from maintaining Workers' Compensation insurance must provide a valid certificate of exemption issued by the State of Florida.

**6. 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.

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

**8. 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.

**9. 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.

**10. 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.

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

**12. 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 sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the PROFESSIONAL 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 PROFESSIONAL.

**13. 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.

**14. 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.

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

**16. 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.

**17. Term and Termination.** The term of this Agreement shall begin on the date of execution and continue through the completion of design and final design acceptance by the CITY, or September 30, 2012, whichever occurs latest.

- a. As previously stated, the start date of construction is not known at this time. The CITY reserves the right to re-engage this professional prior to construction for the following services related to the design provided under this Agreement:
  - i. design review,
  - ii. survey review and update, and
  - iii. revision of design based on current conditions at that time
- b. The CITY further reserves the right to negotiate with the PROFESSIONAL construction phase services if and when construction has been funded and approved by the City Commission. Construction phase services will be approved through an amendment of this Agreement.
- c. The City may, at its sole discretion, choose to extend this Agreement for up to one (1) additional 12 month period. 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.

**18. Non-appropriation.** 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 “non-appropriation” 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 non-appropriation the CITY shall not be obligated for payment for any fiscal period for which funds have not been appropriated.

**19. Contact Person.** The primary contact person under this Agreement for the PROFESSIONAL shall be Frank Bellomo, RLA, Project Manager. The primary contact person under this Agreement for the CITY shall be Ray Sharp, Director of Environmental Services.

**20. Approval of Personnel.** Key Personnel: The City reserves the right to discontinue (terminate) when key personnel identified by the SF 330 - Section E of RFQ 100423, are not available. 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.

**21. 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.

22. **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: \_\_\_\_\_  
Sana Henderson, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**“PROFESSIONAL”**

**BELLOMO-HERBERT AND ASSOCIATES, INC.**

By: \_\_\_\_\_  
*Frank Bellomo*

Printed: \_\_\_\_\_  
Frank Bellomo

Its: \_\_\_\_\_  
President  
(Title)

Date: \_\_\_\_\_  
1-27-2012

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

**I. Scope of Services.** Services will be provided for completion of utility relocation design and contract documents associated with the Main Street Streetscape, from the west side of 14<sup>th</sup> Street (US Highway 27) to the east side of the 9th Street intersection in downtown Leesburg, Florida.

The Greater Leesburg Community Redevelopment Agency (GLCRA) is currently planning, and the PROFESSIONAL is designing under separate Agreement with the GLCRA, the reconstruction of approximately 2,600 linear feet of Main Street from US Highway 27 Eastward to 9<sup>th</sup> Street. The work under that agreement consists of roadway reconstruction, storm system reconstruction, and the complete replacement of surface improvements including curbs and walks, signage, landscaping and irrigation. As a result of this corridor reconstruction, the water, sanitary, reclaimed water and electrical utilities along this corridor are now proposed to be reconstructed. There is currently a gravity sanitary collection main running down the center of the road and a water main predominantly along the south side of the road. Roadway and pedestrian lighting improvements are to be upgraded and designed by Leesburg Electric, but electrical service (electrical outlets and specialty lighting) must now be designed by the PROFESSIONAL.

#### **TASK 1 - Preliminary Design**

1. The PROFESSIONAL will attend utility coordination meetings to establish lines of communication, contract requirements, schedule and reporting requirements.
2. The PROFESSIONAL will collect and review all available information such as maps, aerials, surveys, easements, ROW records, plans, record drawings, soils investigation reports, privately owned utility system data, zoning classification, building codes and standards that may be pertinent to execution of the Project and will review all requirements of all agencies having jurisdiction over the project. The PROFESSIONAL will collect and review any other information that may have a bearing and impact on the planning, design, approval, permitting, construction or operation of the project.
3. The PROFESSIONAL will evaluate existing conditions along the proposed installation/relocation routes by site visitation and will consider current field conditions and the proposed roadway improvements and/or changes that may impact the Project and recommended location/relocations of the pipelines and electrical system.
4. The PROFESSIONAL will prepare a preliminary layout (30% plans) of the proposed construction alignment of the utility mains which will indicate the conflicts and necessary line replacements. Additionally, The PROFESSIONAL will present any other pertinent information necessary for the CITY to evaluate the proposed alignments. The PROFESSIONAL will also provide a preliminary layout (30% plans) of the electrical system including conduit and service panel locations.

5. The PROFESSIONAL will submit four (4) copies of the 30% plans to the CITY for review. The PROFESSIONAL will meet with the CITY to discuss the preliminary layouts and will revise and finalize the plans following the comments from the CITY.

**TASK 2 -Final Design**

1. The PROFESSIONAL will submit four (4) sets of construction documents to the CITY for review and comment at the 60% complete level and will meet with the CITY to review and discuss the submittal. Following the review, the PROFESSIONAL will revise the drawings accordingly. The 60% project construction drawings will be based upon the roadway design plans to include the required Plan and Profile views and necessary Construction Details and Notes. Cross sections will also be included in the project construction drawings in the areas specific to the crossing conflicts to make certain the necessary separation requirements are met. All construction documents shall comply with current requirements of the City Standards. A quality assurance and "constructability" review shall be completed by the PROFESSIONAL prior to all submittals to the CITY.
2. The PROFESSIONAL will submit four (4) sets of construction documents to the CITY for review and comment at the 90% completion level. The 90% level of completion shall be at a level to allow the project to be bid. The PROFESSIONAL will meet with the CITY to review and discuss the 90% submittal.
3. The PROFESSIONAL will submit four (4) sets of construction documents to the CITY at the final completion level. These documents will include 100% complete drawings, specifications and a Unit Cost Bid Form. Collectively these documents will be ready for bidding by qualified contractors.

**TASK 3 - Permitting**

1. The PROFESSIONAL will prepare and submit all required project related permit applications and supporting documentation necessary to obtain required permits for construction and operation of the project from the Florida Department of Environmental Protection.
2. The PROFESSIONAL will respond to all requests for additional information from permitting agencies.
3. Permit fees shall be the responsibility of the CITY.

**VI. Compensation.** In exchange for the services described herein, the Professional shall be compensated as indicated below:

|                        |                     |
|------------------------|---------------------|
| 1. Preliminary Design: | \$ 9,092.00         |
| 2. Final Design:       | \$ 27,505.00        |
| 3. Permitting:         | <u>\$ 3,550.00</u>  |
| <b>TOTAL</b>           | <b>\$ 40,147.00</b> |