

**AGREEMENT FOR PROFESSIONAL SERVICES
ON A CONTINUING BASIS**

THIS AGREEMENT is made as of the _____ day of _____ in the year 2012, 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 **BOOTH & ASSOCIATES, INC.** whose address is 5811 Glenwood Avenue, Suite 109, Raleigh, NC 27612 (hereinafter referred to as the "PROFESSIONAL").

WHEREAS, the CITY issued Request for Qualifications 120083 to contract with a qualified professional or firm to provide professional electrical engineering services on a continuing basis for the City of Leesburg;

WHEREAS, the PROFESSIONAL has been selected as the top ranked firm among all firms submitting proposals;

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

- 1. Services.** The PROFESSIONAL shall perform the following services described in **EXHIBIT "A,"** which is attached and incorporated by reference herein. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for similar projects.
- 2. Compensation.** A detail Schedule of Fees is included in EXHIBIT "B". The cost of the services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price.
- 3. Payment.** CITY shall compensate PROFESSIONAL for their services in the following manner: **SEE EXHIBIT "A"**.
- 4. Authorized Work.** When work is ordered by the CITY the PROFESSIONAL shall prepare a Scope of Services for the requested task. CITY will prepare a Task Order to be executed by both parties. This Terms and Conditions of this Master Agreement shall be incorporated into all Task Orders.
- 5. Authorized Expenses.** The CITY will not be liable for any expenses incurred by the PROFESSIONAL prior to the issuance of a Notice to Proceed except as authorized by the CITY in writing.
- 6. Term.** The initial term of this "Continuing Services" Agreement shall be for five (5) years and will commence on the date of approval of the contract by the Leesburg City Commission. The Schedule of Fees resultant from this solicitation shall prevail for the full duration of the total contract term unless otherwise indicated elsewhere in this document.

Prior to, or upon completion, of the initial term of this contract, the CITY shall have the option to renew this contract for a term not exceeding the original term of the Agreement. The PROFESSIONAL shall maintain, for the entirety of the station additional period(s), the same prices, terms, and conditions included within the originally awarded contract. Continuation of the contract beyond the initial period, and any option subsequently exercised, is a CITY prerogative, and not a right of the PROFESSIONAL. The prerogative may be exercised only when such continuation is clearly in the best interest of the CITY.

7. conditions;

Termination. All or part of this Agreement may be terminated under the following

- a. **For Convenience.** All or part of this Agreement may be terminated by the CITY for its convenience on thirty (30) 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.
- b. **For Cause.** CITY may terminate the Agreement for cause if PROFESSIONAL;
 - i. becomes Insolvent/Bankrupt, or
 - ii. commits a material breach of the Agreement which does not otherwise have a specified contractual remedy, provided that:
 1. CITY shall first provide PROFESSIONAL with detailed written notice of the breach and of CITY's intention to terminate the Agreement, and
 2. PROFESSIONAL shall have failed, within the number of days indicated in the written notice, to commence and diligently pursue cure of the breach.
- c. **Non-Appropriation of Funds.** The PROFESSIONAL understands and agrees any and every Agreement is subject to the availability of funds to the CITY to purchase the specified 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 services or other amounts owed pursuant to any Agreement, from the Source of funding which the CITY anticipates using to pay its obligations hereunder, and the CITY has no other funds, from sources other than ad valorem taxes, which it deems to be available to pay its obligations under Contract. The CITY may terminate an Agreement, with no further liability to the vendor other than compensation for services competently performed up to the date of termination, effective the first day of a fiscal period provided that:
 - i. a non-appropriation has occurred, and
 - ii. The CITY has provided the vendor with written notice of termination not less than fifteen (15) days before the proposed termination date.
 - iii. 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.

8. **Insurance.** The PROFESSIONAL will maintain throughout this Agreement the following insurance: SEE EXHIBIT "A."

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

9. Indemnification. The PROFESSIONAL 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 PROFESSIONAL and persons employed or utilized by the PROFESSIONAL in the performance of this Agreement. The liability of the PROFESSIONAL shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the PROFESSIONAL to indemnify the CITY shall be limited to intentional or negligent acts, omissions, or defaults of the PROFESSIONAL; any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the PROFESSIONAL shall not be obligated to indemnify the CITY against losses arising from the negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the intentional or negligent acts or omissions of the PROFESSIONAL, or any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

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

11. 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.

12. 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 five (5) years after the date of the invoice.

13. Contingent Fees Prohibited. The PROFESSIONAL warrants that it 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 it 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.

14. 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 subconsultants 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.

15. Independent Contractor. The PROFESSIONAL agrees that it is an independent contractor and not an agent, joint venturer, 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 PROFESSIONAL. PROFESSIONAL will be responsible for paying its own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The PROFESSIONAL shall be solely and entirely responsible for his or her acts during the performance of this Agreement.

16. 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.

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

18. 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.

19. **Contact Person.** The primary contact person under this Agreement for the PROFESSIONAL shall be Michael Clements, Vice President. The primary contact person under this Agreement for the CITY shall be Paul Kalv, Director of Electric.

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 120023, 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. **Subcontractors.** The CITY reserves the right to approve all subcontractors for tasks performed under this Agreement. Responsibility for the performance of the contract remains with the PROFESSIONAL exclusively. Subcontractors may be added to this contract during the contract period only with prior written permission from the CITY

22. **Notice to Owner.** All Notice to Owners (NTO) issued by sub-contractors and material suppliers must be mailed or delivered to:

**CITY OF LEESBURG
ATTN: PURCHASING MANAGER
RE: Contract #RFQ-120083
501 W. MEADOW ST
LEESBURG, FL 34748**

23. **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

24. **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 WITENESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor

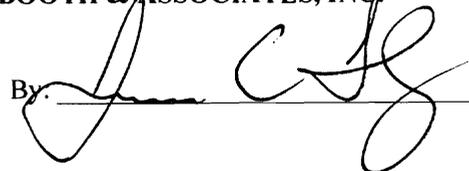
ATTEST:

City Clerk

Approved as to form and content:

City Attorney

"BOOTH & ASSOCIATES, INC."

By:  _____

Printed: James C. Turley

Its: President
Title

Date: July 9, 2012

EXHIBIT "A"

- I. Scope of Services.** The Scope of Services is as described in Request for Qualifications 120083 and professional's response to the RFQ to provide for Electrical Engineering Services on a continuing services basis. All future tasks will be executed by use of a Task Order. Task Orders will be sequentially number beginning with number 1. For each task to be performed PROFESSIONAL will submit a proposal detailing the scope of work and costs. Costs will be detailed to correspond with the schedule of fees included in Exhibit "B". Task orders exceeding Category V threshold (currently \$25,000) will require approval by city commission and execution by the Mayor or acting Mayor. These services may include but not be limited to the following activities:
- A.** Electrical Distribution Engineering – Overhead Construction
 - B.** Electrical Distribution Engineering – Underground Construction
 - C.** Electric Substation Engineering
 - D.** Electric System and Substation Studies and Analysis
 - E.** Distribution Automation Design
 - F.** Protection and Control Integration
 - G.** Numerical relay programming and integration
 - H.** Communication Protocols to include DNNP3, ModBus and IEC 61850
 - I.** Communication system installation and integration, Fiber Optic, Serial Radio, TCP/IC
 - J.** Miscellaneous electric projects
- II. Task Orders.** All projects released will be done so through the use of a Task Order. The professional services firm will provide a proposal for each project in a format approved by the City. The proposal will include a detailed scope of service and cost. The cost must be detailed and reference positions and costs as shown in the schedule of fees located in Exhibit "B".
- If approved, the proposal will be assigned a Task Order number. The Task Order will be approved by the proper authority, Commission or City Manager, depending on the dollar value of the Task Order.
- Any Task Order(s) executed under this agreement will survive the expiration of the original agreement and all amendments and will be valid until all services associated with the Task Order(s) are completed.
- Any project where the costs exceed the limits established by State of Florida Statute 287.055 for Professional Services on a Continuing Basis will be issued as a separate RFQ. The successful firm will be eligible to participate in the RFQ.
- III. Request for Qualifications (RFQ) Document.** RFQ 120083 document is incorporated by reference and made a part hereof.
- IV. Submitted Proposal.** The proposal submitted by PROFESSIONAL in response to RFQ 120083 is incorporated by reference and made a part hereof.
- V. Insurance Requirements.** The PROFESSIONAL will maintain throughout this Agreement the following insurance:

1. Comprehensive General Liability

- a. 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).
- b. 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.

2. Professional Liability/Malpractice/Errors or Omissions Insurance

- a. 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.
- b. 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.
- c. 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.

3. Business Automobile Liability

- a. 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.

4. Workers' Compensation

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

VI. Subcontractors. The CITY reserves the right to approve all subcontractors for tasks performed und this master Agreement. Responsibility for the performance of the contract remains with the PROFESSIONAL exclusively. Subcontractors may be added to this contract during the contract period only with prior written permission from the CITY.

VII. Miscellaneous Requirements.

1. The PROFESSIONAL shall possess all the appropriate licenses, permits and tariffs required by various governmental agencies having jurisdiction over such services. A copy of all the required licenses shall be submitted to the CITY upon request, including certification of a Florida Certified Professional Engineer.
2. The CITY or its authorized representative reserves the right to obtain all documentation deemed appropriate to verify the PROFESSIONAL meets all regulations and specification requirements.
3. Any damage to facilities, equipment or property, due to the incompetence or negligence of the PROFESSIONAL'S personnel, including subcontractors, that occurs, shall be the responsibility of the PROFESSIONAL. The PROFESSIONAL shall reimburse the owner of the damaged facility, equipment or property for any cost to repair damage, beyond reasonable wear, caused by the PROFESSIONAL.

VIII. Schedule of Fees. Pricing shall include all labor, equipment and materials needed to complete the project as described herein. The prices listed below shall remain firm through September 30, 2013. Price increases will not be permitted unless a price adjustment is requested and justified by the PROFESSIONAL and approved by the City prior to September 30, 2013 and each September 30 thereafter.

Preparation of specific projects requested of the Professional will be detailed in a Task Order with pricing based on the Schedule of Rates. Services shall not be rendered nor remunerated which have not received prior approval and coordination from the appropriate City representatives.

If authorized by the CITY, an overtime premium multiplier of 1.5 may be applied to the billing rate of hourly personnel who work overtime in order to meet a deadline, which cannot be met during normal hours.

IX. Compensation. PROFESSIONAL shall be paid not more than once monthly for work performed on existing Task Orders. All invoices submitted by the PROFESSIONAL shall clearly reference the purchase order issued for the Task Order, the project name and the services performed.

X. Guidelines for Reimbursable Expenses. Reimbursable expenses are legitimate expenses incurred by the PROFESSIONAL in addition to fees for basic and additional services for actual expenditures as expressly allowed under this Agreement. Reimbursable costs incurred internally shall be documented in the manner acceptable to the CITY (e.g., copy logs, etc.). The following are acceptable reimbursable items:

1. Electrostatic copies.
2. Blueprinting.
3. Color copies.
4. Incoming faxes.

Standard overhead costs that are not allowed as reimbursable expenses include, but are not limited to: telephone, rent, taxes, office supplies, computer costs, CAD costs, cost of establishing and maintaining a web site, etc.

EXHIBIT "B"
SCHEDULE OF FEES

The attached Schedule of Fees shall remain firm throughout the term of the contract commencing at approval; unless a price adjustment is requested and justified by the PROFESSIONAL and approved by the CITY prior to the expiration of the current term.

Booth & Associates Hourly Labor Rates

Principal

Michael Clements	\$165
William Dorsett	\$165

Professional Engineer – Substation/Relay

Vasant Kamath	\$140
Court Weathers	\$142
Brian Wingler	\$151

Professional Engineer – Distribution

William Jordan	\$108
John Williams	\$138

Project Manager – Substation/Relaying

Alan Beith	\$112
Michael Hardy	\$109
Matt Woodward	\$115

Project Manager – Distribution

Ray Collins	\$115
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Project Engineer – Substation/Relaying

Scott Draper	\$85
Ray Metts	\$88
Joshua Nelson	\$81

Engineering Technician – Substation/Relaying

Brenda Blackmon	\$85
Brittany Carter	\$71
Heyward Grainger	\$99
Jennie Locklear	\$73
James Tripp	\$77
Walter Watts	\$94
Eric Wehrly	\$129

Engineering Technician – Distribution

Bradley Buckner	\$75
Alex Devries	\$73
Briana Eddy	\$65

Designer/CAD Operator – Substation/Relaying

Ken Gillette	\$79
Adrian Harrington	\$62
David Howard	\$46

Administrative Assistant

Vicki Brown	\$59
Sherry Cooksey	\$81

PRINTING CHARGES

B. W. Prints \$ 0.15 per sq. ft.
Laser Prints \$ 0.15 each
CAD Plotter \$ 8.00 per sheet
Color Plots \$14.00 per sheet
Photocopies \$ 0.10 each
Engineering Reduction Drawings \$ 0.75 per sq. ft.
Color Copies \$ 1.50 each

EQUIPMENT USE

Automobile Mileage IRS Approved Rate
Relay Test Equipment-MULTI-AMP PULSAR
Differential Relays \$ 500.00 per day
Overcurrent Relays \$ 250.00 per day
Total Surveying Station \$ 100.00 per day
GPS \$ 70.00 per day
Electronic Distance Meter \$ 50.00 per day
Laser Gun \$ 27.00 per day
Multiamp Phase Angle Meter \$ 50.00 per day
Earth Ground System Tester \$ 90.00 per day
Megohmmeter \$ 90.00 per day
Dranetz Polymeter \$ 50.00 per day
Fluke Scopemeter \$ 100.00 per day

OTHER EXPENSES

Including: Subsistence, rooms, air fare, rental vehicles, and all other directly associated expenses are billed at the actual cost associated therewith with no adders.

Notes:

1. Overtime rates for non-exempt employees will be one and one-half times the rate shown.