AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT is made as of the 26th day of August in the year 2013, 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 **HIMES ELECTRIC COMPANY, INC.** whose address is P.O. Box 516, Lutz Florida 33548 (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 services generally described as Furnish and Install an Athletic Field Lighting System to the CITY as specified in Invitation to Bid 130421 and as described in **EXHIBIT "A"**. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for same or similar work.

2. **Compensation.** The Services shall be completed for a total price not to exceed **$342,950.00**. This cost is the CONTRACTOR'S original bid amount plus all Additive Options listed as O1, O2, O2.1, O3 and O3.1 on the Schedule of Bid Items attached as **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 or change to the Scope of Services. Said price includes all labor, equipment and materials required to complete the project as described herein.

3. **Labor and Materials.** All work will be done in a competent and workmanlike manner, using quality, new materials. CONTRACTOR shall warrantee all materials and workmanship furnished under this agreement as detailed in **EXHIBIT 'A'**.

4. **Insurance.** The CONTRACTOR 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 the CITY by CONTRACTOR 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 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.
   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 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.
   f. All liability insurance, except professional liability, shall be written on an occurrence basis.

g. The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.
h. 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.
i. 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.
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 CONTRACTOR, 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 CONTRACTOR'S liability coverage(s).

5. **Indemnification.** The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and CONTRACTOR shall indemnify CITY and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of CONTRACTOR under this Agreement; or the negligence of the CONTRACTOR in the performance of its duties under this Agreement, or any act or omission on the part of the CONTRACTOR, his agents, employees, or servants. CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR'S duties under this Agreement, or through the negligence of the CONTRACTOR in the performance of its duties under this Agreement, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants.

If however, this Agreement is a "construction contract" as defined in and encompassed by the provision of Florida Statutes § 725.06, then the following shall apply in place of the aforementioned indemnification provision:

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. The liability of the CONTRACTOR shall, however, be limited to one million and 00/100 dollars ($1,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; any contractors, subcontractors, sub-subcontractors, material men, 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 CONTRACTOR shall not be obligated to indemnify the CITY against losses arising from the gross 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 acts or omissions of the CONTRACTOR, or any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

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

7. **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.

8. **Nonappropriation.** The CONTRACTOR understands and agrees that this Agreement 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 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 this Agreement. The CITY may terminate this Agreement, 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 due to nonappropriation of funds.

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.

9. **Access to Records**. The services provided under this Agreement may be funded in part by a grant from a government agency other than the CITY. As a requirement of grant funding CONTRACTOR shall make records related to this project available for examination to any local, state or federal government agency, or department, during CONTRACTOR'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

10. **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.

11. **Acceptance of Goods or Services.** The goods delivered as a result of an award from this solicitation shall remain the property of the CONTRACTOR, and services rendered under the Agreement will not be deemed complete, until a physical inspection and actual usage of the product(s) and/or service(s) is (are) accepted by the CITY and shall be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.

Any goods and/or services purchased as a result of this solicitation and/or Agreement may be tested and/or inspected for compliance with specifications. In the event that any aspect of the goods or services provided is found to be defective or does not conform to the specifications, the CITY reserves the right to terminate the solicitation or initiate corrective action on the part of the CONTRACTOR, to include return of any non-compliant goods to the CONTRACTOR at the CONTRACTOR's expense, requiring the CONTRACTOR to either provide a direct replacement for the item, or a full credit for the returned item. The CONTRACTOR shall not assess any additional charge(s) for any conforming action taken by the CITY under this clause. The CITY will not be responsible to pay for any product or service that does not conform to the contract specifications.

In addition, any defective product or service or any product or service not delivered or performed by the date specified in the purchase order or contract, may be procured by the CITY on the open market, and any increase in cost may be charged against the awarded contractor. Any cost incurred by the CITY in any re-procurement plus any increased product or service cost shall be withheld from any monies owed to the CONTRACTOR by the CITY for any contract or financial obligation.

This project will be inspected by an authorized representative of the CITY. This inspection shall be performed to determine acceptance of work, appropriate invoicing, and warranty conditions.

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 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.

13. **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.

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 CONTRACTOR 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.** 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.

a. **Time of Completion.** Work shall begin no later than 21 calendar days after issuance of the Notice to Proceed. The Scope of Services shall be completed within 90 calendar days from date of Notice to Proceed being issued by the CITY to the CONTRACTOR.

18. **Contact Person**. The primary contact person under this Agreement for the CONTRACTOR shall be TIM HIMES, President. The primary contact person under this Agreement for the CITY shall be MICHAEL CAVANAUGH, Public Works Project Manager.

19. **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.

20. **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.

21. **Warranty.** The CONTRACTOR agrees that, unless expressly stated otherwise in the bid or proposal, the product and/or service furnished as a result of an award from this solicitation shall be covered by the most favorable commercial warranty the CONTRACTOR gives to any customer for comparable quantities of products and/or services and the rights and remedies provided herein are in addition to said warranty and do not limit any right afforded to the CITY by any other provision of this solicitation.

The CONTRACTOR hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the CONTRACTOR in conjunction with this Agreement shall be new, warranted for their merchantability, and fit for a particular purpose.

22. **Risk of Loss.** The CONTRACTOR assumes the risk of loss of damage to the CITY's property during possession of such property by the CONTRACTOR, and until delivery to, and acceptance of, that property to the CITY. The CONTRACTOR shall immediately repair, replace or make good on the loss or damage without cost to the CITY, whether the loss or damage results from acts or omissions (negligent or not) of the CONTRACTOR or a third party.

The CONTRACTOR shall indemnify and hold the CITY harmless from any and all claims, liability, losses and causes of action which may arise out of the fulfillment of this Agreement. The CONTRACTOR shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the CITY when applicable, and shall pay all costs and judgments which may issue thereon.

23. **Illegal Alien Labor** - CONTRACTOR shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an Agreement with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor is in compliance with the terms stated within. The CONTRACTOR nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. CONTRACTOR agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors.

All cost incurred to initiate and sustain the aforementioned programs shall be the responsibility of the CONTRACTOR. Failure to meet this requirement may result in termination of the Agreement by the CITY.

24. **Counterparts.** Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of

an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The CITY shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

25. **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.

[*Signature page follows.*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

THE CITY OF LEESBURG, FLORIDA

By: _____
David Knowles, Mayor

ATTEST:

_____
City Clerk

Approved as to form:

_____
City Attorney

HIMES ELECTRIC COMPANY, INC.

By: Tim Himes

Printed: TIM HIMES

Its: PRESIDENT
(Title)

EXHIBIT "A"

SCOPE OF SERVICES

I. **Scope of Services.** The CONTRACTOR shall provide all labor, materials, supervision and equipment necessary for the demolition of existing lighting and installation of new lighting system in accordance with the specifications and the design submitted by the vendor.

II. **Technical Specifications.** Performance specifications for this project are comprised of the section titled 'Performance Specifications' contained in Section 2 of Invitation to Bid 130421.

III. **General Conditions.** The General Terms and Conditions from Invitation to Bid 130421 are incorporated by reference and made a part hereof.

IV. **Special Terms and Conditions.** The Special Terms and Conditions from Invitation to Bid 130421 are incorporated by reference and made a part hereof.

V. **Insurance and Indemnity Requirements.** The Insurance and Indemnity Requirements from Invitation to Bid 130491 are incorporated by reference and made a part hereof.

VI. **Addenda.** Addenda 1, 2, 3, 4 and 5 of Invitation to Bid 130421 is incorporated by reference and made a part hereof.

VII. **Bid Submittal.** The original bid submittal from the vendor as publicly opened on July 24, 2013 is incorporated by reference and made a part hereof.

VIII. **Licensure.** The CONCTRACTOR is performing this work under State of Florida Electrical Contractor License #EC13001316. Said license shall remain in effect for the duration of this agreement and currently expires August 31, 2014.

IX. **Certificate of Authorization.** The CONTRACTOR holds a Certificate of Authorization issued by the State of Florida Board of Professional Engineers to offer engineering services, if required, on this project. Said certificate number 29919 expires on February 28, 2015.

X. **State Registration.** The CONTRACTOR is registered with the Florida Department of State, Division of Corporations as a Florida Profit Corporation under document number P98000099640.

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EXHIBIT 'B'

** REVISED – ADDENDUM 5 **

130421 – Athletic Field Lighting – Susan Street

SCHEDULE OF BID ITEMS

Your Bid MUST BE submitted on this form. Double check the Bid prices.
Amounts cannot be changed following the Bid due date and time.

Submitting Vendor Name: Himes Electric Company, Inc.

ITEM NO.	ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE
1	**Fields 1 & 2** – Furnish & Install Lighting System in Accordance with the specifications. Includes demolition of existing lighting. Include cost of any shared poles in this line item. (Do not include remote monitoring and control system costs.)	1	LS	$ 139,620.00
2	**Football/Soccer Field** – Furnish and Install Lighting System in Accordance with the specifications. Includes demolition of existing lighting. (Do not include remote monitoring and control system costs.)	1	LS	$ 57,330.00
	FURNISH & INSTALL BASE BID GRAND TOTAL:			$196,950.00

ADDITIVE OPTIONS				
O1	**Fields 3 & 4** – Furnish and Install Lighting System in Accordance with the specifications. Includes demolition of existing lighting. (Do not include remote monitoring and control system costs.)	1	LS	$ 133,900.00
REMOTE MONITORING & CONTROL SYSTEM COSTS				
O2	Cost of the Remote Monitoring and Control System for Fields 1, 2 & Football/Soccer Field	1	LS	$ 3,450.00
O2.1	Communication / Subscription cost for remote monitoring and control – Fields 1,2 & Football/Soccer Field	1	YEAR	$ 0.00
O3	Cost of the Remote Monitoring and Control System for Fields 3 & 4	1	LS	$ 8,650.00
O3.1	Communication / Subscription cost for remote monitoring and control – Fields 3 & 4	1	YEAR	$ 0.00

Time for Completion

Completion of project is desired within 90 calendar days from Notice to Proceed (NTP). Bids which do not indicate a completion time that is within this delivery time may be deemed as non-responsive. Please complete the Items on the following page.

Number of CALENDAR DAYS to begin work after receipt of NTP: 21 Calendar Days

Number of CALENDAR DAYS to completion after receipt of NTP: 90 Calendar Days

Bidders State of Florida Contractor License Number: EC13001316

Include copy of CONTRACTOR's license with your solicitation.