

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the 22nd day of SEPTEMBER in the year 2014, between **THE CITY OF LESBURG**, 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 **BELLOMO-HERBERT AND COMPANY, INC.** whose address is 833 Highland Avenue, Suite 201, Orlando Florida 34803 (hereinafter referred to as the "PROFESSIONAL").

WHEREAS, the CITY issued Request for Qualifications 100423 to contract with a qualified professional or firm to provide design services in the design of the Leesburg Downtown Streetscape Phase II, otherwise known as 9th Street to 14th Street;

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

WHEREAS, the CITY now desires to have the PROFESSIONAL provide bidding and construction phase support services generally required for a project of this size;

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 provide engineering support services for the Main Street Streetscape Project as detailed in the PROFESSIONAL's proposal attached to this Agreement as **EXHIBIT "A"**. The services are generally described as bidding phase and construction phase support services. 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 **\$37,500.00**. 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 in **EXHIBIT "A"**.

3. **Insurance Coverages.**

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).

- 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.

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. **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 misconduct 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 misconduct 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.

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

7. **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.

8. **Public Records Retention.** CONTRACTOR shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being provided by CONTRACTOR herein. CONTRACTOR shall provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. CONTRACTOR shall meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY by CONTRACTOR in a format that is compatible with the information technology systems of the CITY.

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.

- 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. **Nonappropriation.** 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 “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 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 nonappropriation 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 **DC Maudlin, Public Works Director**.

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.

23. **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.

[Signature page follows.]

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

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney

“PROFESSIONAL”

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

By: Frank Bellomo

Printed: Frank Bellomo

Its: Senior Principal.
(Title)



August 22, 2014

Project No. H110102.01

Mr. DC Maudlin
Public Works Director
City of Leesburg, Florida
333 North Knowles Avenue
Winter Park, Florida 32789

**Proposal for Limited Bidding and Construction Observation Services
Main Street Streetscape
Leesburg, Florida**

Dear Mr. Maudlin:

Bellomo-Herbert & Company, Inc. ("BH") is pleased to submit this proposal for Professional Services to the City of Leesburg, Florida ("City") for the above-referenced project. This proposal reflects the anticipated Scope and related costs for services to be provided based on our knowledge of the project.

Project Understanding

The following is our understanding of the project:

- The plans for the construction of the Main Street Streetscape project have been completed by BH.
- The project has been advertised for bids.
- The City desires limited Bidding and Construction Phase assistance for the project.
- The responsibility of frequent on-site inspections of the construction progress will be the responsibility of the City staff.

Scope of Services

Based on our understanding of the project requirements/criteria provided to date by the City, BH will perform the following described Scope of Services:

1.0 – Bidding Phase Services

BH and their sub-consultants shall assist the City with the following:

- 1.1 BH shall assist the City in the bidding process by preparing responses to questions from prospective bidders and by providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.
- 1.2 BH shall consider requests for substitutions and shall prepare addenda identifying approved substitutions to the City for distribution to all prospective bidders. Distribution will be provided by the City.

2.0 – Construction Phase Services

- 2.1 BH and their sub-consultants shall attend a preconstruction meeting.
- 2.2 Attend construction team meetings/conference calls as requested by the City.

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2.3 Based on the estimated six month construction schedule, BH and their sub-consultants will visit the construction site during the duration of construction for an estimated total of up to twelve (12) site visits to observe and become familiar with the progress and quality of the landscape architectural and civil components of work completed to determine if the work is generally being performed in accordance with the contract documents. BH will ultimately provide compliance certifications to regulatory agencies including a "Substantial Completion" and a "Final Completion" site visit with punch lists to the City. These site observation visits will be coordinated with the meetings on-site to reduce travel time to and from the site.

BH will not be required to make exhaustive or continuous on-site inspections/observations to check the quality or quantity of work, to monitor work safety requirements, or to redesign/remodel and revise construction drawings due to unknown field conditions encountered during construction or changes to elements of the work designed by others. BH shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the Contractor's rights and responsibilities under the contract document.

Note: Each site visit will be followed by a field report to the City noting deviations from the contract documents. However BH shall not be responsible for the Contractor's failure to perform the work in accordance with the requirements of the contract documents.

- 2.4 Review and process shop drawings for project construction document compliance.
- 2.5 Respond to Requests for Information (RFI's) from the contractor during construction.
- 2.6 Provide responses, both in written form and by modifying and/or preparing drawings and plans, to questions posed by the contractor during the completion of the construction of the project for design modifications required as a result of unexpected site conditions.
- 2.7 Review and provide up to two sets of comments to the Contractor for the As-Builts provided by the Contractor. The As-Builts are required to be signed and sealed by a registered Land Surveyor. BH will review the As-Builts, and coordinate with the Contractor to provide the level of detail necessary for the Engineer of Record's certification.
- 2.8 Prepare and submit certifications to Florida Department of Environmental Protection (FDEP) for the potable water system and sanitary sewer system including incorporation of compliance data (i.e. signed and sealed as-builts provided by others) and reports provided by the contractor to meet FDEP requirements.
- 2.9 Based on the above noted site observations, reviewed reports, and supporting data provided by the contractor, submit a "letter of General Compliance" for the civil related components of construction to the City.

Schedule

BH will begin work upon receipt of a copy of this Proposal executed and authorized below.

Compensation

Compensation for services rendered by BH will be on an hourly not to exceed basis in accordance with the rates agreed to and incorporated into the Agreement between BH and the Client, attached hereto as Exhibit A. The hourly budgets are not meant to be all inclusive or exhaustive and are estimates that are highly dependent on the level of effort required and/or requested by the Client. As the budget is expended, the Client will be informed and additional compensation will be requested to continue to

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perform services beyond the estimated budgets. GAI will perform the enclosed professional services for the fee summarized below.

Section	Description	Method of Payment	Fee
1.0	Bidding Phase Services	Hourly NTE	\$4,500.00
2.0	Construction Phase Services	Hourly NTE	\$33,000.00
Total (less reimbursables)			\$37,500.00

Reimbursable Expenses

Reimbursable expenses may include in house and out of house projected costs required to perform and deliver design documents such as postage, courier services, overnight deliveries and mileage.

Reimbursable expenses will be invoiced separately on an actual cost basis.

Payment

BH will prepare invoices monthly and payment will be due within thirty (30) days of the date of the invoice.

Services Not Included

The proposed scope of services and cost(s) assume the following items are excluded from this scope of services:

1. Environmental assessments/resolutions or mitigation or other services related to identification and remediation of contaminated soils or groundwater.
2. Construction Phase Soils and Materials Testing (compaction tests, pressure tests, bacteriological tests, concrete and asphalt testing, etc.).
3. Geotechnical Engineering testing, laboratory analysis, and engineering evaluations and reports (coordination of these efforts for civil related items only).
4. As-built Certification Drawings (surveyed).
5. Contract Administration of Contractor's Work Program.
6. Excavation to determine underground features/utilities (i.e. soft digs). Underground Exploration may be required for this project and would be issued under a separate contract
7. Public involvement coordination for notification of commencement of construction, flyers, and utility outage reports, traffic rerouting reports, etc.
8. LEED Certification

Additional Services

Any services not specifically provided for in the above scope will be considered additional services. Proposals for these additional services can be provided by BH at the request of the Client. Additional services we can provide include, but are not limited to, the following:

1. The MOT design and permitting shall be provided by a licensed professional engineer as a requirement of the selected contractor's scope of work. MOT design and permitting for contractor

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phasing/logistics will be considered an additional service and is not included in this scope of service.

2. Structural Design/Inspections.
3. 3D AutoCAD mapping of existing and proposed utilities.
4. Cost of Major Reproduction of Documents (it is anticipated that the Architect/Owner will mass produce documents for permit submittals, resubmittals, project team distribution, and bid and award).
5. Preparing an Engineer's Estimate of Probable Cost or providing quantities (as this will be done by the Contractor)
6. NPDES NOI Permitting Filing (Provided by the Contractor)
7. Contract Administration of Contractor's Work Program.
8. Contractor related dewatering permitting through jurisdictional agencies (i.e. SJRWMD, FDEP, City of Leesburg, etc.).
9. Bid Tabulations or full CEI services.
10. RFI or Change Order Logs.
11. Shop Drawing Logs.
12. Redesign/remodel and/or revise construction drawings due to unknown field conditions encountered during construction.
13. Maintenance Guidelines
14. Contractor Construction Directives (CCD's) or issuance of revisions.
15. Record Drawings and /or BIM based on the contractor's As-Builts (assumes As-Built drawings and BIM will be provided by the contractor).
16. Certifications or construction observation other than those listed in this scope of services.
17. Support in reviewing Contractor Pay Requests, Contractor Change Order Requests and making recommendations for final Certificate for Payment.
18. On-Site Client Meetings not noted in the above scope.