

AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT is made as of the _____ day of _____ in the year 2008, 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 **WAUKESHA ELECTRIC SYSTEMS, INC.**, whose address is 2701 U.S. Highway 117 South, Goldsboro, North Carolina 27530 (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 receipt of which is hereby acknowledged, the parties agree as follows:

- 1. Services.** The CONTRACTOR shall perform the following services: **SEE 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. Labor and Materials.** All work will be done in a competent and workmanlike manner, using quality, new materials. CONTRACTOR shall guarantee all materials and workmanship furnished under this agreement for a period of one (1) year from completion.
- 3. Insurance.** The CONTRACTOR will maintain throughout this Agreement the following insurance: SEE EXHIBIT "A."
 - A.** The original of each such certificate of insurance shall be delivered to CITY by CONTRACTOR prior to starting work, which shall provide 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 shall be written on an occurrence basis.
 - G.** Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be

considered excess as applicable to any claims, which arise out of the agreement, contract or lease.

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

I. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

**City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630**

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

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

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

4. 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 third party 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 Contract; or the negligence of the CONTRACTOR in the performance of its duties under this Contract, 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 third party 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 Contract, or through the negligence of the CONTRACTOR in the performance of its duties under this Contract, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants.

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

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

7. Access to Records. CONTRACTOR will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced

amounts. Said records will be available for examination by the CITY during CONTRACTOR'S normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

8. Contingent Fees Prohibited. The CONTRACTOR warrants that it 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 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 CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

9. Payment. CITY shall compensate CONTRACTOR for their services DETAILED IN EXHIBIT "A" as payment upon successful completion and acceptance of the work. No other costs or services shall be billed to the CITY.

10. Ownership of Documents. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the City's use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

11. Independent Contractor. The CONTRACTOR agrees that it 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 its 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 entirely responsible for his or her acts during the performance of this Agreement.

12. Assignment. Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

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

14. 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.

15. Term and Termination. The term of this Agreement shall be for a period of six (6) months or until the terms and conditions of this Agreement, including, but not limited to, its Scope of Services, have been completed, whichever occurs first, as determined by the CITY. Work shall begin within 15 calendar days from the date the CITY issues a Notice to Proceed. All services to be rendered by the CONTRACTOR, as specified in the Contract Documents, shall be completed within thirty (30) calendar days from the date the CITY issues the Notice to Proceed. All or part of this agreement may be terminated by the CITY for its convenience on fifteen (15) days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently performed up to the date of termination plus demobilization and other related costs.

16. Contact Person. The primary contact person under this Agreement for the CONTRACTOR shall be Ronald A. Yankum. The primary contact person under this Agreement for the CITY shall be Rick Reichert.

17. Approval of Personnel. The CITY reserves the right to approve the contact person and the persons actually performing the professional 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. In the event that any such replacement is for the convenience of the City, and not for justified cause, then the City shall pay contractor for all associated costs for replacing such replaced employee, including any demobilization, remobilization, training, incurred labor, material and other related costs.

18. 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. IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

19. 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.

[Remainder of page intentionally left blank.]

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor

ATTEST:

City Clerk

Approved as to form and content:

City Attorney

"WAUKESHA ELECTRIC SYSTEMS, INC."

By: _____

Its: GENERAL MANAGER, SERVICE

Date: May 7, 2008

Exhibit "A"

SCOPE OF SERVICES

- I. Scope of Work.**
- A. CONTRACTOR shall provide all labor, equipment and materials necessary to exchange the location of the following power transformers:
- (i) The Picciola Substation, which has a Cooper Power 18/24/30 MVA 67 to 13.09 kV LTC Power Transformer; and
 - (ii) The Airport Substation, which has an H.K. Porter 12/16/20 MVA 67 to 13.09 kV LTC Power Transformer.
- II. General Terms and Conditions.** The general terms and conditions from Bid #80191, which are located on pages 9 through 13 of the Bid Packet are incorporated by reference and made a part hereof.
- III. Special Conditions.** The special conditions from Bid #80191, which are located on pages 14 through 16 of the Invitation to Bid Packet are incorporated by reference and made a part hereof.
- IV. Supplemental Conditions.** The supplemental conditions from Bid #80191, which are located on pages 17 through 35 of the Invitation to Bid Packet are incorporated by reference and made a part hereof.
- V. Compensation.** The services shall be performed for a total price of \$160,000.00. In addition to this amount, the CITY is including an additional Eleven Thousand Dollars (\$11,000.00) as contingency funds for use by the CITY. This amount is to be used by the CITY for any additional work or changes it desires on this Project. This dollar amount is not available to the CONTRACTOR unless the addition or change is specifically requested and approved by the CITY, in writing. The cost of the services shall not exceed the above amount unless the CITY has executed a written change order approving any increase in price. Compensation to CONTRACTOR shall be in accordance with Articles 37, 38, 39, and 66 of the supplemental conditions from Bid #80191.
- VI. Addenda.** The Addenda from Bid #80191 are incorporated by reference and made a part hereof.
- VII. Vendor Bid Response.** The vendor response to Bid #80191 submitted is incorporated by reference and made a part hereof. This includes the document titled Waukesha Service – Quotation # GSS12433 consisting of 7 pages.
- VIII. Exceptions and Additions.** The exceptions and additions, which are attached hereto as Exhibit "B", are incorporated by reference and made a part hereof. The terms and conditions of this Agreement are subject to CONTRACTOR'S exceptions and additions.

Leesburg, FL
Substation Transformer Swap

Exceptions to Section 2 – GENERAL TERMS & CONDITIONS:

31. Insurance and Indemnity Requirements

31.1.6 The following modifications shall apply to this section:

- Insert "Contractor will provide a certificate of insurance" after "Manager" in the 1st line.
- Delete "and upon request, Contractor shall make available certified copies of the various policies for inspection."

31.1.7 Delete "except professional liability".

31.2 Indemnification

31.2.1 The following modifications shall apply to this section:

- Insert "third party" between "all" and "claims" in the 2nd line.
- Delete "performance of CONTRACTOR'S duties under this agreement, contract or lease, or through the" in the 5th & 6th lines.
- Insert "negligent" between "any" and "act" in the 7th line.

31.3 Certificate of Insurance

31.3.2 Delete "and professional liability" in the 1st line.

31.7 Endorsements and Additional Insurance

31.7.2 Pollution/Environmental Impairment Liability Coverage – Delete this section.

Exceptions to Section 4 – SUPPLEMENTAL CONDITIONS:

Article 27. Royalties and Patents – Insert the following at the end of this section:

Contractor's obligation to indemnify Owner for infringement shall not apply to any infringement that results from Contractor's compliance with Owner's specifications, design or instructions, or from Owner's combination of Contractor's work with other goods or services.

Article 30. Delays and Extension of Time – The 1st paragraph of this section shall be modified as follows:

- Insert "labor disputes" between "strikes" and "lockouts" in the 2nd line.
- Delete "any such reasonable time as the Project Representative may decide" and insert "a period equal to the time lost by reason of delay, and a reasonable time for resuming performance." in the 5th line.

Article 32. Suspension of Work – Insert "including demobilization and remobilization costs" between "contract" and "as" in the 4th line.

Article 33. The Owner's Right to Terminate Contract – Insert "and a reasonable opportunity to cure" between "notice" and "terminate" in the 7th line.

46. Guaranty – Delete this section and insert the following:

(a) For a period of one year from the date of delivery of goods or performance of services under Contractor's proposal, Contractor warrants, to the original purchaser, the goods manufactured by Contractor to be free from defects in material and workmanship and the services performed by Contractor to be in accordance with the specifications of Contractor's proposal. (b) If within such period it shall be proven to Contractor's reasonable satisfaction that any goods are defective or any services are nonconforming, such goods shall, at Contractor's option, be repaired or replaced (F.O.B. Contractor's factory, with all removal and installation to be at the Owner and Engineer's expense) and such services corrected or a substitute obtained. (c) THE FOREGOING WARRANTIES STATE CONTRACTOR'S ENTIRE WARRANTY (EXCEPT TITLE) AND OWNER AND ENGINEER'S SOLE AND EXCLUSIVE REMEDY RELATED TO SUCH GOODS AND SERVICES. EXCEPT AS EXPRESSLY SET FORTH ABOVE, CONTRACTOR MAKES NO WARRANTY OF ANY KIND WHATSOEVER, AND CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTIES IMPLIED BY LAW, INCLUDING, BUT NOT LIMITED TO ANY, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. (d) THIS WARRANTY SHALL NOT APPLY TO ANY LOSS OR DAMAGE RESULTING FROM: (i) NORMAL WEAR AND TEAR; (ii) ALTERATION, MISUSE, ABUSE, OR IMPROPER INSTALLATION, OPERATION OR MAINTENANCE BY OWNER AND ENGINEER, OR A THIRD PARTY; (iii) ACCIDENT, FIRE, FLOOD, OR ACTS OF GOD; OR (iv) INACCURATE OR INCOMPLETE INFORMATION OR DATA SUPPLIED OR APPROVED BY OWNER AND ENGINEER. Owner and Engineer shall defend and indemnify Contractor for any loss or damage of Contractor arising out of (i) through (iv) above and any breach by Owner and Engineer of its covenants and obligations under the Terms.

Article 47. Indemnity – The following modifications shall apply to the 1st paragraph:

- Insert "third party" between "all" and "claims" in the 3rd line.
- Delete "performance of Contractor's duties under the Contract, or through the" in the 5th line.
- Insert "negligent" between "any" and "act" in the 6th line.

Article 68. Inspections, Correction, Removal Of Defective Work – Delete the last paragraph of this section. Any repair of defective work shall be subject to the Waukesha Electric Warranty.

Article 69. Acceptance of Defective Work; Correction of Defective Work by the Owner – Delete this section. Any repair of defective work shall be subject to the Waukesha Electric Warranty.

Insert the following new section:

Article 71. Limitation of Liability

Contractor shall in no event be liable for any indirect, special or consequential damages whatsoever, under any theory of relief, including without limitation, breach of warranty, breach of contract, tort (including negligence), strict liability, or otherwise, arising out of or related to Contractor's acts or omissions. Under no circumstances shall Contractor's liability to Owner exceed the contract price for the specific goods and services upon which the claim is based. Any action for breach of contract or otherwise must be commenced within one year after the cause of action has accrued.