

## **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** is made as of the \_\_\_ day of \_\_\_\_\_ in the year 2009, 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 **OSMOSE UTILITIES SERVICES, INC.** whose address is 215 Greencastle Road, Tyrone, Georgia 30290-2944 , (hereinafter referred to as the "CONTRACTOR").

### **WITNESSETH:**

**WHEREAS**, the CITY desires to retain the services of a competent and qualified contractor to provide utility pole inspections, tagging and repair services for the CITY; and

**WHEREAS**, The Orlando Utility Commission, Florida (hereinafter referred to as "OUC") publicly submitted an Invitation to Bid Number 2491 OQ, for an annual agreement for utility pole inspection services; and

**WHEREAS**, Invitation to Bid 2491 OQ did seek proposals from firms or individuals to provide such services on an annual contract for OUC; and

**WHEREAS**, the CONTRACTOR did submit a bid response that was deemed responsive and responsible by OUC; and

**WHEREAS**, OUC did hold a negotiation meeting, in which OUC and the CONTRACTOR did reach mutual agreement as to the terms and conditions of such services; and

**WHEREAS**, the CONTRACTOR and OUC thereafter entered into an agreement wherein CONTRACTOR would provide utility pole inspection services for OUC; and

**WHEREAS**, the CITY desires that the CONTRACTOR provide the same services for the CITY under the same terms and conditions as agreed upon for OUC; and

**WHEREAS**, the CONTRACTOR is willing to provide such services to the CITY.

**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. Recitals.** The above recitals are true and correct and by reference are incorporated herein and made a part thereof.
- 2. Services.** The CONTRACTOR shall provide utility pole inspection services, as and when directed by the CITY, in accordance with the current pricing specified in CONTRACTOR'S Agreement with OUC, Bid No. 2491 OQ is incorporated by reference herein. Pricing for services provided will be in accordance with Exhibit "A".

**3. Conflicting Terms.** To the extent that the CONTRACTOR'S Agreement with OUC, Bid No. 2491 OQ conflicts with the terms of this Agreement, the terms of this Agreement shall govern.

**4. Labor and Materials.** All work will be done in a competent and workmanlike manner, using quality, new materials in compliance with this agreement and all documents incorporated herein.

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

**A. Comprehensive General Liability.** The CONTRACTOR 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 coverages, and property damage resulting from explosion, Collapse or underground exposures (x,c,u).

**B. Business Automobile Liability.** The CONTRACTOR 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.

**C. Workers Compensation.** The CONTRACTOR 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. CONTRACTORS exempt from maintaining Workers' compensation insurance must provide a valid certificate of exemption issued by the State of Florida.

**D.** 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.

**E.** All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A".

**F.** 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.

**G.** 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.

**H.** The required insurance shall not limit the liability of the CONTRACTOR. The CITY does not represent these coverage or amount to be adequate or sufficient to protect the CONTRACTOR'S interests or liabilities, but are merely required minimums.

**I.** The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.

**J.** 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.

**K.** Except for workers' 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.

**L.** 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**

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

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

**6. Waiver of Lien.** The CONTRACTOR agrees to make payment of all proper charges for labor and materials supplied and CONTRACTOR shall hold harmless the CITY against any claim arising out of: any unpaid bills for labor, services or materials furnished to this project.

**7. Indemnification.** CONTRACTOR shall to the maximum extent permitted by law defend, indemnify, and hold harmless the CITY, its officers, directors, and employees

from and against all claims, damages, losses, and expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from (i) all third party claims for labor and materials furnished under the Specifications of the bid Package for which the CITY may become liable for payment under the laws of the state, (ii) the performance of Services by CONTRACTOR or any person or organization directly or indirectly employed by the CONTRACTOR to furnish any of the Services or anyone for whose acts any of them may be liable, (iii) breach of the terms of the Purchase Order by CONTRACTOR or any person or organization directly or indirectly employed by the CONTRACTOR to perform any of the Services, (iv) violations of applicable law by CONTRACTOR or any person or organization directly or indirectly employed by the CONTRACTOR or perform any of the Services or anyone for whose acts any of them may be liable, (v) injury or disease or death of third parties (including CITY employees and agents and those of CONTRACTOR), or damage to property caused by the negligence, strict liability or willful misconduct of the CONTRACTOR or any person or organization directly or indirectly employed by the CONTRACTOR to perform any of the Services or anyone for whose acts any of them may be liable. Notwithstanding anything in this Section 7 to the contrary, the liability of CONTRACTOR under this Section 7 for the indemnification of the CITY, its officers, directors and employees shall not exceed the greater of (i) the price paid by the CITY under the Purchase Order for the Services or (ii) two (2) million dollars.

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

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

**10. 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 at the CONTRACTOR'S place of business during normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

**11. 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 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.

**12. Payment.** CITY shall compensate CONTRACTOR for their services in monthly installments based on the full and verified completion of work during the previous month.

**13. Ownership of Documents.** All data, specifications, calculations, estimate plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or disclosed by the CITY (or by such sub-consultants and specialty consultants of the CITY) in rendering services hereunder shall be the sole property of the CITY. All devices, designs (including drawings), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by the CONTRACTOR, and all intellectual property rights, shall remain CONTRACTOR'S sole property. The CITY and the CONTRACTOR grant to the other party to this agreement a non-exclusive, non-transferable license to use any such material solely for the other parties' use for the manufacturing of, installation of, or the use of the equipment purchased under this agreement. Unless required by applicable law, neither the CITY nor the CONTRACTOR shall disclose any such material to any third party without the other party's prior written consent. All original documents shall be permanently kept on file at the office of the respective parties.

**14. Independent Contractor.** The CONTRACTOR agrees that he or she 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' compensations 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.

**15. 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.

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

**17. 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.

**18. Term and Termination.** This Agreement shall be effective upon execution and shall continue up to November 10, 2012. Upon mutual agreement of the CITY and CONTRACTOR this Agreement may be extended for four (4) consecutive one (1) year periods starting November 11, 2012. 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 provided prior to cancellation or suspension up to the date of termination.

19. **Contact Person.** The primary contact person under this Agreement for the CONTRACTOR shall be David R. Hagley. The primary contact person under this Agreement for the CITY shall be \_\_\_\_\_.

20. **Approval of Contractors.** The CITY reserves the right to approve the contact person and the persons actually performing the CONTRACTOR 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.

21. **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.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

**CITY OF LEESBURG, FLORIDA**

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

Approved  
As to Form \_\_\_\_\_  
City Attorney

**"OSMOSE UTILITIES SERVICES"**

By: David R. Hagley

Printed  
Name: David R. Hagley

Its: Vice President-Contracts

Date: June 24, 2009