

CITY OF VINELAND, NJ  
RESOLUTION NO. 2014-550

A RESOLUTION AUTHORIZING AN AGREEMENT FOR PROFESSIONAL SERVICES WITH LEIDOS ENGINEERING, LLC d/b/a LEIDOS CONSULTING, LLC., OKLAHOMA CITY, OK, FOR CONSTRUCTION AND PROJECT MANAGEMENT SERVICES IN CONNECTION WITH VARIOUS ELECTRIC UTILITY INITIATIVES, FOR AN AMOUNT NOT TO EXCEED \$160,000.00.

WHEREAS, there exists a need for professional services for Construction and Project Management Services for Simple Cycle Combustion Units and various other generation, transmission and distribution improvements for the Vineland Municipal Electric Utility; and

WHEREAS, the City of Vineland has a need to acquire such professional services as a Non-Fair and Open Contract pursuant to N.J.S.A. 19:44A-20.5; and

WHEREAS, the purchasing agent has determined and certified in writing that the value of said services will exceed \$17,500.00; and

WHEREAS, Leidos Engineering, LLC d/b/a Leidos Consulting, LLC, Oklahoma City, OK, has submitted a proposal indicating they will provide the professional services in an amount not exceed \$160,000.00 for the contract period of January 1, 2015 to December 31, 2015; and

WHEREAS, Leidos Consulting, LLC has completed and submitted a Business Entity Disclosure Certification for Non-Fair and Open Contract which certifies that Leidos Consulting, LLC has not made any reportable contributions to a political or candidate committee in the City of Vineland in the previous one year and that the contract will prohibit Leidos Consulting, LLC from making any reportable contributions through the term of the contract to a political or candidate committee in the City of Vineland; and

WHEREAS, the availability of funds for said Professional Services Contract to be awarded herein have been certified by the City Comptroller; and

WHEREAS, the Local Public Contract Law (N.J.S.A. 40A:11-1, et seq) requires that the Resolution authorizing the award of contract for Professional Services without competitive bidding and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vineland as follows:

1. That the Mayor and Clerk are hereby authorized and directed to execute a Non-Fair and Open Agreement pursuant to N.J.S.A. 19:44A-20.5 with Leidos Engineering, LLC d/b/a Leidos Consulting, LLC, Oklahoma City, OK, for construction and project management services, in connection with various Electric Utility initiatives, in an amount not exceed \$160,000.00, for the contract period of January 1, 2015 to December 31, 2015.

2. That this Agreement is awarded without competitive bidding as a Professional Service in accordance with N.J.S.A. 40A:11-5 (1) (a) of the Local Public Contracts Law because said services to be rendered or performed require knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction distinguished from general academic instruction or apprenticeship and training.

3. That the Business Disclosure Entity Certification, the Political Contribution Disclosure Form and the Determination of Value be placed on file with this Resolution.

4. That a Notice of this action shall be printed once in the Daily Journal.

BE IT FURTHER RESOLVED, that the Director of Law is authorized to make minor changes to the contract as needed after Council approved.

Adopted:

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President of Council

ATTEST:

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City Clerk



REQUEST FOR RESOLUTION FOR CONTRACT AWARDS  
UNDER 40A:11-5 EXCEPTIONS  
(PROFESSIONAL SERVICES, EUS, SOFTWARE MAINTENANCE, ETC)

11/14/14  
\_\_\_\_\_  
(DATE)

1. Service (detailed description): Professional Services for Project and Construction  
\_\_\_\_\_

2. Amount to be Awarded: \$ 160,000  
\_\_\_\_\_

- Encumber Total Award
- Encumber by Supplemental Release

3. Amount Budgeted: \$ 160,000  
\_\_\_\_\_

4. Budgeted: By Ordinance No. 2009-30  
Or Grant: Title & Year \_\_\_\_\_

5. \*\*Account Number to be Charged: \_\_\_\_\_

6. Contract Period: 1/1/15 to 12/31/15  
\_\_\_\_\_

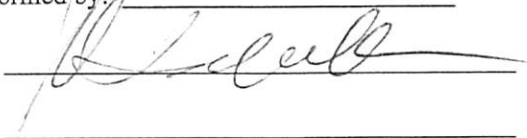
7. Date To Be Awarded: \_\_\_\_\_

8. Recommended Vendor and Address: Leidos Engineering, LLC, 9400 N. Broadway,  
Suite 300, Oklahoma City, OK 73114  
\_\_\_\_\_

9. Justification for Vendor Recommendation:(attach additional information for Council review)  
See attached letter.  
The Leidos person shall be Peter Kudless who has been on VMEU property for  
over six (6) years for design, bidding and construction of Clayville Substation,  
H M Down Unit #11 and Clayville Unit #1.  
\_\_\_\_\_

- Non-Fair & Open (Pay-to-Play documents required)
- Fair & Open: How was RFP advertised? \_\_\_\_\_

10. Evaluation Performed by: Gustav Foster  
\_\_\_\_\_

11. Approved by:   
\_\_\_\_\_

12. Attachments:

- Awarding Proposal
- Other: Pay for play certifications

- Send copies to:  
Purchasing Division  
Business Administration

\*\* If more than one account #, provide break down

**MEMORANDUM**

**November 21, 2014**

**TO: DENISE MONACO**  
ASSISTANT BUSINESS ADMINISTRATOR

**FROM: GUSTAV FOSTER, JR., PE**  
CHIEF ENGINEER, ELECTRIC UTILITY

**SUBJECT: REQUEST FOR PROFESSIONAL SERVICES AGREEMENT FOR  
PROJECT MANAGEMENT**

Vineland Municipal Electric Utility requests that a Professional Services Contract be awarded to Leidos, Engineering, LLC d/b/a Leidos Consulting, LLC (Formally SIAC R. W. Beck Inc) 9400 North Broadway, Suite 300, Oklahoma City, OK 73114, to provide professional services for a Simple Cycle Combustion unit to be built at the Clayville Unit #1 not to exceed \$160,000. The purpose of this contract is for construction and management service for simple cycle unit and other various generation, transmission and distribution improvements.

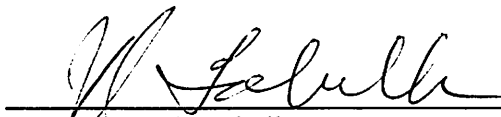
This is a non-fair and open award and profession services request. The Pay to Play paperwork is attached. The Leidos person shall be Peter Kudless who has been on VMEU property for over six year for Clayville Substation construction and Combine cycle unit design and bidding. He has over 30 year of experience in operation, construction and design in generation, substation, distribution, and transmission systems in the electric utility industry.

Leidos Contract is attached with the play for pay forms and documents..

The contract shall be encumber by requisition on a monthly basis to account number 022-0-00-00-0000-2-7511300 and other accounts as needed.

Please make the resolution authorizing the Director of Law to make any minor changes to the contract as needed after Council approves it.

Approval:



Joseph Isabella  
Director Electric Utility

GF

Attachment

## PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is dated November 24, 2014 by and between **Leidos, Engineering, LLC, d/b/a Leidos Consulting, LLC** ("Consultant"), with offices at 1801 California Street, Suite 2800, Denver, Colorado 80202 and **City of Vineland** ("Client"), with offices at 640 East Wood Street, Vineland, New Jersey 08362, collectively the "Parties" and each a "Party".

**NOW, THEREFORE** in consideration of the promises herein and for other good and valuable consideration, the Parties agree as follows:

- 1. Scope of Services:** Consultant and Client agree Consultant will provide the services of Mr. Peter Kudless as seconded employee to perform professional services for project and construction management in support of Client's efforts and perform miscellaneous project coordination activities under the direction of the Client as time to time requested in writing (including by email).
- 2. Independent Contractor:** Consultant is an independent contractor and is not an employee of Client. Services performed by Consultant under this Agreement are solely for the benefit of Client. Nothing contained in this Agreement creates any duties on the part of Consultant toward any person not a party to this Agreement.
- 3. Standard of Care:** Consultant will perform services under this Agreement with the degree of skill and diligence normally practiced by consultants performing the same or similar services. No other warranty or guarantee, expressed or implied, is made with respect to the services furnished under this Agreement and all implied warranties are disclaimed.
- 4. Changes/Amendments:** This Agreement and its exhibits constitute the entire agreement between the Parties and together with its exhibits supersede any prior written or oral agreements. This Agreement may not be changed except by written amendment signed by the Parties. The estimate of the level of effort, schedule and payment required to complete the Scope of Services, as Consultant understands it, is reflected herein. Services not expressly set forth in this Agreement or its exhibits are excluded. Consultant shall promptly notify Client in writing if changes to the Scope of Services affect the schedule, level of effort or payment to Consultant and the schedule and payment shall be equitably adjusted as mutually agreed to by parties. If Consultant is delayed in performing its services due to an event beyond its control, including but not limited to fire, flood, earthquake, explosion, strike, transportation or equipment delays, act of war, or act of God, then the schedule or payment under the Agreement may be amended as mutually agreed to by the parties, if necessary, to compensate Consultant for any additional costs due to the delay not caused by Consultant's actions or inactions.

**PROFESSIONAL SERVICES AGREEMENT**  
**Between Leidos Engineering, LLC d/b/a Leidos Consulting, LLC.**  
**and The City of Vineland, New Jersey**  
**For Services of Mr. Peter Kudless**

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5. **Fee for Services:** The fee for services shall be based upon Mr. Peter Kudless furnishing services 40 hours per week (plus overtime if authorized) through December 31, 2015.

6. **Payment:** Client shall pay Consultant for services furnished under this Agreement upon submission of monthly invoices, an amount equal to actual hours of services provided by Mr. Peter Kudless multiplied by a rate of \$93.75 per hour plus expenses.

Client shall pay Consultant in U.S. dollars within thirty (30) days of receipt of invoices less any disputed amounts subject to approval by Council of the City of Vineland. If Client disputes any portion of the invoice, the undisputed portion will be paid and Consultant will be notified in writing, within ten (10) days of receipt of the invoice of the exceptions taken. Consultant and Client will attempt to resolve the payment dispute within sixty (60) days or the matter may be submitted to arbitration as provided below. If Client fails to pay undisputed invoiced amounts within sixty (60) days after delivery of invoice, Consultant, at its sole discretion, may suspend services hereunder or may initiate collections proceedings, including mandatory binding arbitration, without incurring any liability or waiving any right established hereunder or by law.

7. **Indemnity:** To the extent permitted by law, Consultant agrees to indemnify, defend and hold harmless Client and its directors, officers, shareholders and employees from and all loss, damage, claim or liability (including without limitation, reasonable attorneys' fees) incurred by Client to the extent arising out of Consultant's negligent acts, errors or omissions, including claims by any third party or claims made by employees of Consultant. Client explicitly and expressly waives any right it has to immunity under applicable industrial insurance laws with respect to any action against Client and agrees to assume liability for actions brought by its own employees against Client as provided above. The parties agree that this indemnification provision shall be narrowly construed that the Consultant shall indemnify Client for all liability to the extent cause by Consultant's negligence.

8. **Reperformance of Services:** If Client believes any of the services provided under this Agreement do not comply with the terms of this Agreement, Client shall promptly notify Consultant to permit Consultant an opportunity to investigate. If the services do not meet the applicable standard of care, it will promptly reperform the services at no additional cost to Client, including assisting Client in selecting remedial actions. If Client fails to provide Consultant with prompt notice of non-compliance and an opportunity to investigate and reperform its services, Consultant's total obligation to Client will be limited to the costs Consultant would have incurred to reperform the services.

9. **Section Intentionally Left Blank.**

**PROFESSIONAL SERVICES AGREEMENT**  
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**and The City of Vineland, New Jersey**  
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**10. Insurance:** Consultant shall maintain insurance with the following required coverages and limits and upon request, will provide a Memorandum of Insurance to Client:

Worker's Compensation	Statutory
Employer's Liability	U.S. \$1,000,000
Commercial General Liability	U.S. \$1,000,000 per occurrence
	U.S. \$1,000,000 aggregate
Commercial Auto Liability	U.S. \$1,000,000 combined single limit
Professional Liability	U.S. \$1,000,000 per claim and in the aggregate

In addition, Consultant agrees to add Client as an additional insured on any General Liability Insurance Policy.

**11. Work Product:** Client shall have the unrestricted right to use the documents, analyses and other data prepared by Consultant under this Agreement ("Work Products"); provided, however Client shall not rely on or use the Work Products for any purpose other than the purposes under this Agreement and the Work Products shall not be changed without the prior written approval of Consultant. If Client releases the Work Products to a third party without Consultant's prior written consent, or changes or uses the Work Products other than as intended hereunder, (a) Client does so at its sole risk and discretion, (b) Consultant shall not be liable for any claims or damages resulting from the change or use or connected with the release or any third party's use of the Work Products and (c) Client shall indemnify, defend and hold Consultant harmless from any and all claims or damages related to the release, change or third party use. The parties agree that Consultant's work is subject to disclosure in accordance with the New Jersey Open Public Records Act or other Law, Statute or Order of the court, and that the Consultant will have no liability as to any third party who has obtained Consultant's word product.

**12. Limitation of Liability:** No employee of Consultant shall have individual liability to Client. To the extent permitted by law, the total aggregate liability of Consultant, its officers, directors, shareholders, employees and subconsultants for any and all claims arising out of this Agreement, including attorneys' fees, and whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall not exceed the revenue received by Consultant under this Agreement or One Hundred Fifty Thousand Dollars (U.S. \$150,000.00), whichever is greater.

Due to the limited scope and level of effort of any construction phase services of Consultant (if applicable), the Parties agree that the construction contractors and vendors will remain exclusively responsible for compliance with contract requirements. Any construction phase observation or inspection by Consultant is not intended to provide any assurances that deficiencies are discovered in the contractor's means, methods, techniques or practices or that such are suitable or adequate. Consultant has no legal or financial responsibility for claims against a contractor or vendor arising from a

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contractor's or vendor's failure to comply with its contract or warranty obligations.

13. **No Consequential Damages:** In no event and under no circumstances shall Consultant be liable to Client for any principal, interest, loss of anticipated revenues, earnings, profits, increased expense of operation or construction, loss by reason of shutdown or non-operation due to late completion or otherwise or for any other economic, consequential, indirect or special damages.
14. **Information Provided by Others:** Client shall provide to Consultant in a timely manner any information Consultant indicates is needed to perform the services hereunder. Consultant may rely on the accuracy of information provided by Client and its representatives.
15. **Opinions of Cost:** Consultant estimates of operation expenses or construction costs represent its best judgment as an experienced and qualified professional and are not a guarantee of cost. This section does not apply to the cost of Consultant performing the Scope of Services.
16. **Safety and Security:** Unless specifically included as a service to be provided under this Agreement, Consultant specifically disclaims any authority or responsibility for job site safety and safety of persons other than Consultant's employees. Consultant shall not provide any services under this Agreement and disclaims any responsibility related to site security or the assessment, evaluation, review, testing, maintenance, operation or safety practices or procedures related to security.
17. **Limits of Authority:** Consultant's comments, opinions, and recommendations will be solely in connection with its duties as a consultant to the Client. The overall responsibility for construction and operation of any project will rest with the Client and its contractor(s) and operator(s). Consultant will not be responsible for the acts or omissions of the Client, any contractor or any operator(s). Unless otherwise provided, employees of the Consultant will not:
  - Undertake any of the responsibilities of the Client, contractor(s), subcontractor(s), contractor(s)'s superintendent or operator;
  - Expedite work for the Client, contractor(s), or operator(s) unless the Client requests and reimburses costs for specific expediting functions; or
  - advise the Client, contractor(s), or operator(s) on, or issue directions as to, safety precautions and programs in connection with any Project.
18. **Termination:** Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. Client shall pay Consultant for all services rendered to the date of termination plus actual expenses for winding down the services. If either

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party defaults in its obligations hereunder, the non-defaulting party, after giving seven (7) days written notice of its intention to terminate or suspend performance under this Agreement, may, if cure of the default is not commenced and diligently continued, terminate this Agreement or suspend performance under this Agreement.

19. **Dispute Resolution:** Consultant and Client shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner and agree that if resolution cannot be made to attempt to mediate the conflict by a professional mediator (except for payment disputes which may be submitted directly to arbitration). If mediation does not settle any dispute or action which arises under this Agreement or which relates in any way to this Agreement or the subject matter of this Agreement within ninety (90) days after either requests mediation, parties may pursue any remedies in law or equity.

20. Section Intentionally Left Blank.

21. **Miscellaneous:**

- a. This Agreement is binding upon and will inure to the benefit of the Client and Consultant and their respective successors and assigns. Neither may assign its rights or obligations hereunder without the prior written consent of the other party.
- b. Any notice required or permitted by this Agreement to be given shall be deemed to have been duly given if in writing and delivered personally or five (5) days after mailing by first-class, registered, or certified mail, return receipt requested, postage prepaid and addressed as follows:

Client: City of Vineland  
Attention: Mr. Gustav Foster  
Address: 415 N. West Avenue, Vineland, NJ 08362-1508

Consultant: Leidos, Engineering, LLC, d/b/a Leidos Consulting, LLC  
Attention: Rick Reiff  
Address: 1801 California Street, Suite 2800, Denver, CO 80202

With a copy to:  
Legal Department (which will not be considered notice)  
Leidos, Engineering, LLC, d/b/a Leidos Consulting, LLC  
9400 N. Broadway, Suite 300  
Oklahoma City, OK 73114

- c. Client expressly agrees that all provisions of the Agreement, including the clause limiting the liability of Consultant, were mutually negotiated and that but for the inclusion of the limitation of liability clause in the Agreement, Consultant's compensation for services would otherwise be greater and/or Consultant would



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not have entered into the Agreement.

- d. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue as to other circumstances.
- e. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey.
- f. This Agreement shall not be construed against the party who drafted it.
- g. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original instrument, but all of which taken together shall constitute one instrument.
- h. This Agreement is effective for the period of January 1, 2015 through December 31, 2015.

**IN WITNESS WHEREOF**, the Parties have signed this Agreement the date first written above.


**CITY OF VINELAND**

Signature \_\_\_\_\_  
Name  
Title  
Date

**ATTESTED BY**  
**CITY CLERK, CITY OF VINELAND**

Signature \_\_\_\_\_  
Name  
Title  
Date

**LEIDOS, ENGINEERING, LLC, D/B/A LEIDOS CONSULTING, LLC**

Signature  \_\_\_\_\_  
Name Rick K. Reiff  
Title Managing Director  
Date November 24, 2014