

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the _____ day of _____ in the year 2007, 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 **E.R.G. ENTERPRISES, L.L.C.**, whose address is 12111 Fieldstone Lane, Bayonet Point, Florida 34667 (hereinafter referred to as the "PROFESSIONAL").

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 PROFESSIONAL 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. The services shall be performed for a total price of \$32,800. The cost of the services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price.

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 PROFESSIONAL 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 CITY by PROFESSIONAL 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 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 workers' 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).

4. Indemnification. The PROFESSIONAL agrees to make payment of all proper charges for labor required in the aforementioned work and PROFESSIONAL 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 PROFESSIONAL under this Contract; or the negligence of the PROFESSIONAL in the performance of its duties under this Contract, or any act or omission on the part of the PROFESSIONAL, his agents, employees, or servants. PROFESSIONAL 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 PROFESSIONAL'S duties under this Contract, or through the negligence of the PROFESSIONAL in the performance of its duties under this Contract, or through any act or omission on the part of the PROFESSIONAL, his agents, employees, or servants.

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

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 two million and 00/100 dollars (\$2,000,000.00) per occurrence, and the obligation of the PROFESSIONAL to indemnify the CITY shall be limited to acts, omissions, or defaults of the PROFESSIONAL; any contractors, subcontractors, subsubcontractors, 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 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 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.

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

6. 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.

7. 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.

8. Contingent Fees Prohibited. The PROFESSIONAL warrants that it 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 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 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.

9. Payment. CITY shall compensate PROFESSIONAL for their services in one (1) lump sum 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 PROFESSIONAL (or by such subconsultants 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.

11. Independent Contractor. The PROFESSIONAL agrees that it 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' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the PROFESSIONAL. PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL, as specified in the Contract Documents, shall be completed within 45 days from the date the CITY issues a 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 PROFESSIONAL. In such event, the PROFESSIONAL will be entitled to compensation for services competently performed up to the date of termination.

16. Contact Person. The primary contact person under this Agreement for the PROFESSIONAL shall be Ernest R. Gandolfo, Owner. The primary contact person under this Agreement for the CITY shall be Charlie Weller, Airport Manager.

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 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.

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

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor

ATTEST:

City Clerk

Approved as to form and content:

City Attorney

E.R.G. ENTERPRISES, L.L.C.

By: _____

Its: _____

Date: _____

Exhibit "A"
SCOPE OF SERVICES

- I. **Scope of Services.** The Professional shall provide all labor, materials, supervision and equipment for the airport retention pond clearing project. The project consists of removing 12 inches of vegetation and soil from the bottom of three (3) dry retention ponds located at the Leesburg International Airport, Leesburg, Florida. All material removed will be deposited on airport property at predetermined spots. The material will be spread per specifications.

- II. **Technical Specifications.** Technical specifications for this project are comprised of the following documents contained in the Invitation to Bid number 70081.
 - A. **Specifications.** Pages 14 and 15 of the bid document titled 'Specifications'.

- III. **General Conditions.** The General Terms and Conditions from the Invitation to Bid 70081 are incorporated by reference and made a part hereof.

- IV. **Insurance and Indemnity Requirements.** The Insurance and Indemnity Requirements from the Invitation to Bid 70081 are incorporated by reference and made a part hereof.

- V. **Addenda.** Addendum 1 of Invitation to Bid 70081 is incorporated by reference and made a part hereof.