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 TLC DIVERSIFIED, INC., whose address is 2719 17TH St. East, Palmetto, FL 34221 (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 policy of insurance, or a complete duplicate, shall be delivered to CITY by CONTRACTOR 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 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, except professional liability, shall be written on an occurrence basis.

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

H. 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.

I. 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.

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 CONTRACTOR, 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 CONTRACTOR' S liability coverage(s).

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 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 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.

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 CONTRACTOR 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 CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The liability of the CONTRACTOR shall, however, be limited to two million and 00/100 dollars ($2,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; 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 CONTRACTOR 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 CONTRACTOR, 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.** 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 in the following manner: SEE EXHIBIT "A". 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 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 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 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 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 an initial term, up through and including three (3) years. After the initial term, the Parties may renew this Agreement, under the same terms and conditions for three (3) additional one (1) year terms. 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.

16. Contact Person. The primary contact person under this Agreement for the CONTRACTOR shall be Thurston Lamberson. The primary contact person under this Agreement for the CITY shall be David Ough.

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.

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.

IN WITENESS WHEREOF, the parties have set their hands and seals.

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor

ATTEST:

_____
City Clerk

Approved as to form and content:

_____
City Attorney

"TLC DIVERSIFIED, INC."

By: _____
Thurston Lamberson

Its: President
Title

Date: _____

EXHIBIT "A"

I. GENERAL

A. REFERENCES

1. **Request for Qualifications No. 80013.** The document in its entirety is incorporated by reference and made a part hereof.

2. **Contractor RFQ Response/Submittal.** The response to RFQ 80013 submitted by the Contractor is incorporated by reference and made a part hereof.

B. SCOPE OF WORK

1. The Contractor understands and agrees that this Agreement provides the Contractor with a "pre-qualified" status to provide quotes to the City regarding the furnishing of labor, supervision, tools, equipment and miscellaneous materials to provide Lift Station installation and rehabilitation services at various locations throughout the City of Leesburg as a "Primary Contractor". The City may also utilize a Secondary Contractor on particular projects to supplement the services being provided by the Primary Contractor.

2. The contractor understands and agrees that this Agreement does not in any way guarantee that the City will select the Contractor for any specific project or guarantee that the Contractor will perform any actual work for the City.

3. The City shall, shall for future Projects, request quotes from "pre-qualified" Contractors and shall by either task order, separate agreement, or written amendment to the respective Contractor Services Agreement award specific work and/or project tasks to one or more of the "pre-qualified" Contractors on a case by case basis for each project.

4. The City may consider other factors than price alone when awarding projects to pre-qualified Contractors. The City reserves the right to make awards that are in the best interest of the City.

C. REGULATIONS

1. The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of the work specified herein.

2. The Contractor shall obtain all licenses or certificates as may be required by federal, state and local laws, ordinances, rules and regulations for the proper execution of the work required of Contractor pursuant to this agreement.

D. QUALITY ASSURANCE

1. The Contractor shall perform all work in accordance with industry standards.

2. The Contractor shall provide an adequate number of licensed/skilled workmen who are thoroughly trained and experienced in the work and materials that are the subject of this specification.

E. WORKING HOURS

1. The Contractor shall perform the work required by this Agreement during the hours and on the scheduled days as agreed to by the City.

2. The Contractor shall check-in with the City upon arrival at the work site and shall also checkout with the City prior to departure from the work site.

II. MATERIALS

A. The City shall not be obligated to provide any materials to Contractor.

B. The Contractor shall provide all materials required to perform the work requested by the City.

C. The City reserves the right to use Owner Direct Purchase as allowed by the State of Florida in order to not pay sales tax on materials and supplies.

III. EXECUTION

A. GENERAL SERVICES

The following is a generic description of a general scope of work which may be required during future City Projects. The Parties understand and agree that the actual work to be performed will become more detailed upon review of individual stations requiring rehabilitation on an as-needed basis and that the City may request additional related services on any given Project that may not be listed herein.

1. Site dewatering and trenching and shoring for installation of wetwell or valve box, etc. as required.

2. Installation permitting of electrical by code to include, conduits, junction boxes, disconnects, meter cans, control panels (Duplex & Combination type), SCADA systems etc. as required.

3. Installation of precast wetwell & valve vault hatches.

4. Installation of all pertinent hardware such as plug valves, check valves, pump bases, guide rails, piping, float brackets, etc. as per City specifications.

5. Installation of fiberglass or HDPE liners or approved equal.

6. Removal of existing hardware and facilities as defined during site visits and prior to proposal.

7. Bypass pumping. The Contractor shall submit a bypass pumping plan at the time of the response to the City's request for specific Project quotes.

8. Citizen consideration will be reviewed when bypass pumping equipment is required. Determination will be made on an individual basis prior to proposal submission as to the need of quiet pack type pumping equipment.

9. Wet taps and all other pipe connections as required in initial proposal review and site visit.

10. Restoration of work areas to acceptable standards as defined in initial proposal review and site visit.

B. PERFORMANCE REQUIREMENTS

1. The Contractor shall perform its obligations and functions specified herein in accordance with this specification, and to industry standards. The Contractor shall coordinate its activities with and adjust its activities to the needs and requirements of the City, and shall perform its activities so as not to annoy, disturb, unreasonably interfere with or delay the operations or activities of the City.

2. The Contractor shall perform all work in a neat and orderly manner in compliance with all Federal, State, and City regulations. The Contractor shall ensure that OSHA rules and regulations are followed at all times.

3. The Contractor shall ensure that all dates for commencement and completion of work are to be coordinated with the City.

4. If the Contractor discovers that any work is required which is not specified herein, then the Contractor shall notify the City of the need for such additional work. The Contractor shall not perform any work outside the scope of this Agreement without prior written authorization from the City.

5. If the Contractor makes use of any hazardous materials then the Contractor shall ensure that any and all Federal and State right-to-know laws are complied with. The Contractor shall ensure that MSDS safety sheets are made available to all workers and City representatives. The Contractor shall report immediately to the City and spillage or dumping of hazardous materials on City property. The Contractor shall bear responsibility for the cleanup and any other costs incurred by either the City, Contractor, or third parties related to such incidents.

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The Contractor shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the work site and other persons including, but not limited to, the general public who may be affected thereby.

IV. PAYMENT

A. The Contractor shall perform the services requested by the City hereunder and bill the City for such services at the following rates:

To be provided in separate agreement, task order, or written amendment hereto.

B. The Contractor understands and agrees tha the prices provided for each specific task on a particular Project shall include all labor, equipment, and materials needed to perform the specific services and that the Contractor shall not otherwise bill the City for any labor, materials, or expenses incurred.

C. The Contractor shall provide the City with monthly invoices regarding services rendered and shall ensure that each such invoice lists each project separately. All invoices for payment must be sent to:

City of Leesburg Finance Department
Attn: Accounts Payable
PO Box 490630
Leesburg, FL 34749-0630

V. BONDS

A. The City reserves the right to require a Public Construction Bond a individual projects. This requirement will depend on the value of the project and the history of the Contractor. Any requirement of a Public Construction Bond will be determined and made aware prior to project quotes being received.

(End of Exhibit "A")