AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT is made as of the _____ day of _____ in the year 2012, 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 **C.W. ROBERTS CONTRACTING, INC.** whose address 3372 Capital Circle, TALLAHASSEE, FLORIDA 32308 (hereinafter referred to as the "CONTRACTOR").

WHEREAS, the CITY was awarded grant funding under FAA AIP No. 3-12-0042-018-2008 and FDOT FM No. 418460-1-94-01 for Mitigated Wetland Mitigation at the Leesburg International Airport;

WHEREAS, the CITY issued Invitation to Bid 120031 soliciting interested and qualified firms to submit offers for completion of the work as specified in the project manual;

WHEREAS, the CONTRACTOR has been deemed responsive and responsible and submitting the lowest offer;

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. Compensation. The services shall be performed for a total price of $128,732.00. The cost of the services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price. The total price here includes the following amount in the aggregate.

3. 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.

4. 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.

5. Authorized Expenses. The CITY will not be liable for any expenses incurred by the CONTRACTOR prior to the issuance of a Notice to Proceed except as authorized by the CITY in writing.

6. 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 polices.
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).

7. **Indemnification.** 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 one million and 00/100 dollars ($1,000,000.00) 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, sub-subcontractors, 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.

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

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

10. 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.

11. 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 five (5) years after the date of the invoice.

12. 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.

13. 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.

14. 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.

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. The term of this Agreement shall be for a period of 120 calendar days 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 10 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 60 calendar days from the date the CITY issues a Notice to Proceed.

19. Termination. All or part of this Agreement may be terminated under the following conditions;

a. **For Convenience.** 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.

b. **For Cause.** CITY may terminate the Agreement for cause if CONTRACTOR;
   i. becomes Insolvent/Bankrupt, or
   ii. commits a material breach of the Agreement which does not otherwise have a specified contractual remedy, provided that:
      1. CITY shall first provide CONTRACTOR with detailed written notice of the breach and of CITY's intention to terminate the Agreement, and
      2. CONTRACTOR shall have failed, within the number of days indicated in the written notice, to commence and diligently pursue cure of the breach.

None of these remedies restricts the CITY's right to pursue a cure by filing a claim against the CONTRACTOR's Public Construction Bond.

20. Contact Person. The primary contact person under this Agreement for the CONTRACTOR shall be Charles Taylor, Project Manager. The primary contact person under this Agreement for the CITY shall be Charlie Weller, Airport Manager.

21. 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.

22. Notice to Owner. All Notice to Owners (NTO) issued by sub-contractors and material suppliers must be mailed or delivered to:

CITY OF LEESBURG
ATTN: PURCHASING MANAGER
RE: Contract #ITB-120031
501 W. MEADOW ST
LEESBURG, FL 34748

23. 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

24. Authority to Obligate. 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.

[Rest of page intentionally left blank.]

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

C.W. ROBERTS CONTRACTING, INC.

By: _____

Printed: Charles W. Roberts III

Its: President
Title

Date: April 9, 2012

EXHIBIT "A"

I. **Scope of Services.** The contractor shall provide all labor, tools, equipment, materials, and supplies for the mitigated wetland removal project at the Leesburg International Airport.

II. **Specifications.** Specifications for this project are comprised of ITB 120031 Project Manual and Drawings for Mitigated Wetland Removal FAA AIP No. 3-12-0042-018-2008/FDOT FM No. 418460-1-94-01.

III. **Addenda.** Addendum One to ITB 120031 is hereby incorporated by reference.

IV. **Vendor Bid Response**. The bid response to Invitation to 120031 submitted March 22, 2012, by the CONTRACTOR is incorporated by reference and made a part hereof.

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

A. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles. Coverage limit will be $1,000,000 combined single limits with the CITY named as an additional insured.

B. Comprehensive General Liability, including

i. Contractor's Protective Liability Product, Completed Operations, and Contractual Liability in the amount of $1,000,000.00
ii. Employer's Liability - $500,000.00
iii. Bodily Injury - $500,000.00 each person
iv. Property Damage - $500,000.00 each person
v. Personal Injury Liability - $500,000 each person with the CITY named as an additional insured.

C. Worker's Compensation - Statutory Benefits

A certificate of insurance evidencing all required coverage shall be delivered to CITY by CONTRACTOR prior to starting work. Each policy shall contain a provision that it may not be canceled for any reason without prior, written notice being given to CITY by the insurer. All policies shall be issued by insurers of recognized responsibility, which are licensed to do business in Florida.

SUPPLEMENT TO AGREEMENT FOR CONTRACTOR SERVICES

Items checked are applicable and a supplement to the Agreement.

[X] **Guaranty of Faithful Performance and Payment** - A Public Construction Bond (Performance and Payment Bond), written by a Surety firm satisfactory to the City of Leesburg on the forms provided by the CITY which comply with Section 255.05(1), Florida Statutes, will be required of the successful Bidder to guarantee that he will deliver a complete project under his Contract in strict accordance with the Contract Documents and that he will pay promptly all persons supplying him with labor or materials for the work.

The Public Construction Bond shall be for an amount not less than the Total Contract Price as agreed to by both parties and set forth in the Agreement. The cost of this bond shall be borne by the CONTRACTOR AND included in the price bid in the Bid Response.

This bond shall be substantially in the form provided herein and written by a qualified Surety firm and through a reputable and responsible surety bond agency licensed to do business in the State of Florida and Lake County and meet the following requirements:

The Surety must be rated as "A" or better as to strength by Best's Insurance Guide, published by Alfred M. Best Company, Inc., 75 Fulton Street, New York, New York.

Bonding Limit - Any One Risk: The Bonding Limit of the Surety shall not exceed ten (10) percent of the policy-holders surplus (capital and surplus) as listed by the aforementioned Best's Insurance Guide. The completed Bond shall be executed in four (4) counterparts and delivered to the City of Leesburg with the required Power-of-Attorney and executed contract.

[X] **Illegal Alien Labor** - Contractor shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor is in compliance with the terms stated within. The General Contractor nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors.

All cost incurred to initiate and sustain the aforementioned programs shall be included in contract price. Failure to meet this requirement may result in contract termination by the City.

SUPPLEMENT TO AGREEMENT FOR CONTRACTOR SERVICES

[X] **Grant Requirements.** CONTRACTOR acknowledges that CITY is obtaining a significant portion of the funding for this project from various sources including grants from other governmental agencies. To the extent it is not inconsistent with the terms of this Agreement to do so CONTRACTOR will assist CITY upon request in assuring that all conditions and requirements of the various grants are fulfilled so that funding for the project is preserved.

[X] **Access to Records by Others.** The project covered by this Agreement is funded in whole or part by a grant from a government agency other than the CITY. As a requirement of grant funding CONTRACTOR shall make records related to this project available for examination to any local, state or federal government agency, or department, during CONTRACTOR'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

[X] **E-VERIFY**. Contractor shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor is in compliance with the terms stated within. The General Contractor nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors. All cost incurred to initiate and sustain the aforementioned programs shall be included in contract price. Failure to meet this requirement may result in contract termination by the City.