

CONTINUING CONTRACT
FOR
CONSULTING PROFESSIONAL SERVICES

NASSAU COUNTY, FLORIDA

THIS CONTRACT entered into this 9th day of August, 2004, by and between the **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the **State of Florida**, hereinafter referred to as "County", and **LG2 ENVIRONMENTAL SOLUTIONS, INC.**, hereinafter referred to as the "Consultant", whose address is 88 Riberia Street, Suite 300, St. Augustine, Florida 32084.

WHEREAS, the County desires to obtain continuing consulting professional services on an "as needed" project-by-project basis; and

WHEREAS, said services are more fully described in Schedule "A" "Scope of Services", which is attached hereto and made a part hereof; and

WHEREAS, the Consultant has submitted a proposal for providing those services; and

WHEREAS, the consultant represents that it has the expertise in the type of professional services required; and

WHEREAS, the County has chosen three (3) consultants to provide services, and the Consultant is one of the three.

In consideration of the mutual promises contained herein, the County and the Consultant agree as follows:

ARTICLE 1 - SERVICES

The Consultant's responsibility under this Contract is to provide professional/consultation services in the area of professional environmental services, as more fully described in Schedule "A" "Scope of Services" attached hereto, and to perform and complete the work specifically set forth in each task set forth herein.

The Work shall be performed on an "as needed" basis per project and by task order to this contract. Each Task Order shall be approved by the Board of County Commissioners.

Services of the Consultant shall be under the general direction of a County representative, as determined by the Board of County Commissioners, to be identified in each task order, who shall act as the County's representative during the performance of this Contract.

ARTICLE 2 - SCHEDULE

The County and the Consultant shall mutually agree upon each schedule which will become a part of each task

order. All reports shall coincide with County requirements.

ARTICLE 3 - PAYMENTS TO CONSULTANT

A. The County shall pay to the consultant for services satisfactorily performed as follows: The Consultant will bill the County on a monthly basis or as otherwise provided and at the amounts set forth in the Contract Addenda for services rendered toward completion of the Scope of Work. The amounts billed shall represent the approximate completion of services outlined in the Scope of Work contained in various task orders. The invoice shall be paid within forty five (45) days and pursuant to Section 218.70, Florida Statutes, the Florida Prompt Payment Act.

B. Invoices received from the Consultant pursuant to this Contract will be sent to the Clerk, indicating that services have been rendered in conformity with the task, and the Clerk will provide the invoice to the appropriate County Department for review and recommendation(s) as to payment. Invoices must reference this Contract and the task order against which the Consultant is billing.

C. Final Invoice per Task Order: In order for both parties herein to close their books and records, the Consultant will clearly state "final invoice" on the Consultant's final/last billing to the County, this

indicates that all services have been performed and all charges and costs have been invoiced to the County and that there is no further work to be performed on the specific task order.

D. Contract Task Order: Each task order shall have its own specific value on a "stand alone" basis.

E. Labor Unit rates shall be established at the beginning of this Contract and may be adjusted annually upon consent of the County beginning with the next task order issued after the anniversary date of the Contract. The labor unit rates are set forth in Schedule "C".

ARTICLE 4 - TRUTH-IN NEGOTIATION CERTIFICATE

The signing of this Contract by the consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of the Contract.

The said rates and costs shall be reduced to exclude any significant sums should the County determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. The

County may exercise its rights under this Article within one (1) year following final payment.

ARTICLE 5 - TERMINATION

This Contract may be terminated by the County upon thirty (30) days' prior written notice to the Consultant.

Unless the Consultant is in breach of this Contract, the Consultant shall be paid for services rendered to the County's satisfaction through the date of termination. After receipt of a Termination Notice and, except as otherwise directed by the County, the Consultant shall:

- A. Stop work on the date to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work to the County.
- D. Continue and complete all parts of the work that has not been terminated.

ARTICLE 6 - PERSONNEL

The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the County.

All of the services required hereunder shall be performed by the Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under State and local law to perform such services.

Any changes or substitutions in the consultant's key personnel, as may be listed in Schedule "B", must be made known to the County's representative and written approval granted by the County before said change or substitution can become effective.

The Consultant warrants that all services shall be performed by skilled and competent personnel consistent with sound environmental practices and shall incorporate those Federal, State, and local laws, regulations, codes, and standards that are applicable at the time Consultant renders services.

ARTICLE 7 - SUBCONTRACTING

The Consultant may utilize subcontractors that are skilled and competent personnel consistent with sound environmental practices and shall incorporate those Federal, State, and local laws, regulations, codes, and standards that are applicable at the time Consultant renders services.

The Consultant is solely responsible and liable for the work of the subcontractor(s). The Consultant shall not award work to subcontractors in excess of fifty percent (50%) of the contract price without prior written approval of the Owner.

ARTICLE 8 - FEDERAL AND STATE TAX

The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Consultant. The Consultant shall not be exempted from paying tax to their suppliers for materials used to fulfill contractual obligations with the County, nor is the Consultant authorized to use the County's Tax Exemption Number in securing such materials.

The Consultant shall be responsible for payment of his/her own FICA and Social Security benefits with respect to this Contract.

ARTICLE 9 - AVAILABILITY OF FUNDS

The obligations of the County under this Contract are subject to the availability of funds appropriated for its purpose by the Board of County Commissioners of Nassau County.

ARTICLE 10 - INSURANCE

A. The Consultant shall not commence work under this Agreement until he/she has obtained all insurance required under this Paragraph, and such insurance has been approved by the County.

B. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Consultant shall furnish Certificates of Insurance to the County prior to the commencement of operations. The Certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount, and classification as required for strict compliance with this Paragraph, and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the County. Compliance with the foregoing requirements shall not relieve the consultant of its liability and obligations under this Contract.

C. The Consultant shall maintain, during the term of this Contract, standard Professional Liability Insurance in the Amount of \$1,000,000.00 on a claims made basis.

D. The Consultant shall maintain, during the term of this Contract, Comprehensive General Liability Insurance in the amount of \$1,000,000.00 per occurrence to protect the

Consultant from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages, which may arise from any operations under this Contract, whether such operations be by the Consultant or by anyone directly employed by or contracting with the Consultant.

E. The Consultant shall maintain, during the term of this Contract, Comprehensive Automobile Liability Insurance in the amount of \$100,000.00 combined single limit for bodily injury and property damage liability to protect the Consultant from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant.

F. The Consultant shall maintain, during the term of this Contract, adequate Workers' Compensation Insurance and Employers' Liability Insurance in at least such amounts as are required by law for all of its employees pursuant to Florida Statutes, Section 440.02.

G. All insurance, other than Professional Liability and Workers' Compensation, maintained by the Consultant, shall specifically include the county as an "Additional Insured".

ARTICLE 11 - INDEMNIFICATION

The Consultant shall indemnify and hold harmless the County, and its Officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and/or any persons employed or utilized by the Consultant in the performance of the Contract. The amount of the indemnification shall be limited to the insurance amounts required under Article 10.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

The Consultant binds itself and its partners, successors, executors, administrators, and assigns, in respect to all covenants of this Contract. The consultant shall not assign, sublet, convey, or transfer its interest in this Contract without the written consent of the County.

ARTICLE 13 - CONFLICT OF INTEREST

The consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services under this Contract.

The Consultant shall promptly notify the County in writing by certified mail of any potential conflicts of interest for any prospective business association,

interest, or other circumstance, which may influence or appear to influence the consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an opinion of the County, whether such association, interest, or circumstance constitutes a conflict of interest if entered into by the Consultant.

The County agrees to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notification by the Consultant. If, in the opinion of the County, the prospective business association, interest, or circumstance would not constitute a conflict of interest by the Consultant, the County shall so state in the notification, and the Consultant shall, at his/her option enter into said association, interest, or circumstance, and it shall be deemed not in conflict of interest with respect to services provided to the County by the Consultant under the terms of this Contract.

ARTICLE 14 - FINANCIALS

The Consultant shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of

indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 15 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The Consultant shall deliver to the County for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the County under this Contract, including "as-builts" or construction record plan sets, if required.

All drawings, maps, sketches, and other data developed or purchased under this Contract or at the County's expense shall be and shall remain the County's property and may be reproduced and reused at the discretion of the County. If the county reuses any of the documents for anything other than their specific intended purposes, the county shall indemnify the Consultant.

The County and the consultant shall comply with the provisions of Florida Statutes, Chapter 119 (Public Records Law).

All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including, but not limited to, any

representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract, and the consummation of the transactions contemplated hereby.

ARTICLE 16 - INDEPENDENT CONTRACTOR RELATIONSHIP

The Consultant is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times and in all places be subject to the Consultant's sole direction, supervision, and control.

The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and, in all respects the Consultant's relationship and the relationship of its employees to the County, shall be that of an Independent Contractor and not as employees or agents of the County. The Consultant does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Contract.

ARTICLE 17 - CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide

employee working solely for the consultant to solicit or secure this Contract, and that is has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee, working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the aware or making of this Contract.

ARTICLE 18 - ACCESS AND AUDITS

The Consultant shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the Work for at least three (3) years after completion of this Contract. The County and the Clerk shall have access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours, at the County's or the Clerk's cost, upon five (5) days' written notice.

ARTICLE 19 - NONDISCRIMINATION

The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age, or national origin.

ARTICLE 20 - ENTIRETY OF CONTRACTUAL AGREEMENT/TERM OF CONTRACT

The County and the Consultant agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Contract shall be in effect for four (4) years from the day of acceptance by the County, and may be extended after negotiations with the Consultant, if approved by the Board of County Commissioners for four (4) additional one (1) year increments. None of the provisions, terms, and conditions contained in this Contract may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 21 - REMEDIES

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise of any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees.

ARTICLE 22 - AUTHORITY TO PRACTICE

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 23 - WAIVER OF CLAIMS

Consultant's acceptance of final payment shall constitute a full waiver of any and all claims, by it against the County arising out of this Contract or otherwise related to any task, except those previously made in writing and identified by Consultant as unsettled at the time of the final payment. Neither the acceptance of Consultant's services nor payment by the County shall be deemed to be a waiver of any of the County's rights against the Consultant.

ARTICLE 24 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the

remainder of this Contract, or the application of such item(s) or provision(s), to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other item and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 25 - AMENDMENTS AND MODIFICATIONS

No task orders and/or modifications of this Contract shall be valid unless in writing and signed by each of the parties. All amendments and modifications shall be in the form of a change order or task order.

The County reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the County's notification of a contemplated change, the Consultant shall: (1) if requested by the County, provide an estimate for the increase or decrease in costs due to the contemplated change; (2) notify the County of any estimated change in the completion date; and (3) advise the County in writing if the contemplated change shall effect the Consultant's ability to meet the completion dates or schedules of this Contract.

If the County so instructs in writing, the Consultant shall suspend work on that portion of the work affected by

a contemplated change, pending the County's decision to proceed with the change.

If the County elects to make the change, the County shall issue a task order for changes to a task in progress or a contract change order if the original contract is being changed or amended, and the Consultant shall not commence work on any such change until such written task order or change order has been issued and signed by each of the parties.

ARTICLE 26 - ENUMERATION OF CONTRACT DOCUMENTS

The Contract Documents, except for modifications issued after the execution of this Contract, shall be enumerated in each task order.

ARTICLE 27 - FLORIDA LAW

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Contract shall be held in Nassau County.

ARTICLE 28 - DISPUTES

Any dispute arising under this Contract shall be addressed by the representatives of the County and the Consultant as set forth herein. Disputes shall be set forth in writing to the County Administrator with a copy to the Contracts Manager and provided by overnight mail, UPS, FedEx, or certified mail, with a response provided in the

same manner prior to any meetings of representatives. The initial meeting shall be with the County Administrator and the Contracts Manager or their designee and a representative of the Consultant. If the dispute is not settled at that level, the County Attorney shall be notified in writing by the Contracts Manager or his/her designee, and the County Attorney and the County Administrator and the Contracts Manager or their designee(s) shall meet with the Consultant's representative(s). Said meeting shall occur within sixty (60) days of the notification by the County Administrator. If there is no satisfactory resolution, the claims disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, if not disposed of by agreement as set forth herein, shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County and the cost of mediation shall be borne by the Consultant. If either party initiates a Court proceeding, and the Court orders, or the parties agree to, mediation, the cost of mediation shall be borne by the Consultant. Consultant shall not stop work during the pendency of mediation or dispute resolution. No litigation shall be

initiated unless and until the procedures set forth herein are followed.

ARTICLE 29 - WAIVER OF TRIAL BY JURY

Both parties agree by the execution of this Agreement to waive any entitlement to a jury trial. Any trial shall be a bench or "Judge" trial.

ARTICLE 30 - NOTICE

All notices required in this Contract shall be sent via certified mail, return receipt requested, and, if sent to the County shall be mailed to:

J. M. "Chip" Oxley, Jr.
Nassau County Clerk of the Circuit Court
Post Office Box 4000
Fernandina Beach, FL 32035-4000

And, if sent to the Consultant, shall be mailed to:

Leesa Gerald, President
Lee Gerald, Vice President
LG2 Environmental Solutions, Inc.
88 Riberia Street, Suite 300
St. Augustine, FL 32084

ARTICLE 31 - HEADINGS

The heading preceding the several Articles and Sections hereof are solely for convenience of reference and shall not constitute a part of this Contract or affect its meaning, construction, or effect.

Time is of the essence.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

Floyd L. Vanzant
FLOYD L. VANZANT
Its: Chairman

ATTEST:

J. M. "CHIP" OXLEY, JR.
J. M. "CHIP" OXLEY, JR.
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney

Michael S. Mullin
MICHAEL S. MULLIN
CONSULTANT:

LG2 ENVIRONMENTAL SOLUTIONS, INC.

Leesa Gerald
LEESA GERALD
PRESIDENT

Lee Gerald
LEE GERALD
VICE-PRESIDENT

CONTRACT ADDENDA

Schedule "A" - Scope of Services

Schedule "B" - Key Personnel

Schedule "C" - Labor Unit Rates

Task Order to contain:

1. Scope of Services for each project.
2. Time schedule for each project.
3. Dollar amount to be paid for each project.
4. How fees will be billed (i.e. hourly, daily, weekly).

EXHIBIT B

**LG2 ENVIRONMENTAL SOLUTIONS, INC.
ST. AUGUSTINE, FLORIDA**

**Personnel List
July 2004**

Personnel Name

Lee Gerald
Leesa Gerald
Bruce Hallett
John Mark Benton
Brian Spahr
Leila Baruch
Ryan Spohn
Denise Bevan
Michelle Wallace

Labor Category

Principal
Principal
Senior Geologist
Senior Project Manager
Senior Project Manager
Project Manager
GIS Specialist
Env. Technician I
Office/Clerical

EXHIBIT C

**LG2 ENVIRONMENTAL SOLUTIONS, INC.
ST. AUGUSTINE, FLORIDA**

**2004/2005 LABOR RATE SCHEDULE
EFFECTIVE THROUGH 12/31/05**

<u>Labor Category</u>	<u>Labor Rate</u>
<u>Professional Services</u>	
Principal/Program Manager	\$95.00
Senior Scientist II/Engineer /Geologist	\$85.00
Senior Scientist I (Project Manager)	\$75.00
Staff Scientist II/Engineer/Geologist	\$65.00
Staff Scientist I/GIS Specialist	\$60.00
Archaeologist	\$55.00
<u>Technical Services</u>	
Environmental Technician II (29090)	\$55.00
GIS Field Technician	\$50.00
Environmental Technician I (29090)	\$45.00
Archaeologist Technician	\$45.00
Graphic Artist/CAD (29062)	\$45.00
Clerical Data Entry (I01311)	\$35.00
<u>Communication Services</u>	
Computer Charges	\$10.00/hr
CAD Charges	\$20.00/hr
Facsimile	\$1.00/page
Photocopies	\$0.15/copy
Color Photocopies	\$1.00/copy
Cell Phone	\$10/day
Phone Calls	\$20/day
Document FedEx/Courier charges	\$25/per package
Document and Graphics Production Costs	\$10/day
Bluelines	\$5/per copy

For expert testimony, an additional 50 percent will be added to the applicable employee labor rate. Such expert testimony charges would include depositions and presentations of testimony, but would exclude the preparation of testimony.