

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DORAL
AND
EE&G ENVIRONMENTAL SERVICES, LLC
FOR
ENVIRONMENTAL SERVICES AND SITE ASSESSMENT REPORT/REMEDIAL ACTION PLAN FOR
DORAL LEGACY PARK**

THIS AGREEMENT is made between **EE&G ENVIRONMENTAL SERVICES, LLC** a Florida corporation, (hereinafter the “Consultant”), and the **CITY OF DORAL, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for environmental services and site assessment report/remedial action plan for Doral Legacy Park (the “Project”); and

WHEREAS, the City desires to engage the Consultant to perform the services specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows.

1. **Scope of Services/Deliverables.**

- 1.1 The Consultant shall furnish professional services to the City as set forth in the Scope of Services found in Exhibit A, which is incorporated herein and made a part hereof by this reference.
- 1.2 The “Scope of Services” includes a Project Schedule for the Project which includes a breakdown of tasks, timeline and deliverables to the City.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through September 30, 2017, unless earlier terminated in accordance with Paragraph 8. The City Manager may extend the term of this Agreement up to an additional 180 days by written notice to the Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in the Project Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

3.1 The Consultant shall be compensated in the following manner:

 X A lump sum amount of \$10,000.00, regardless of the number of hours or length of time necessary for Consultant to complete the Scope of Services. Consultant shall not be entitled to any additional payment for any expenses incurred in completion of the Scope of Services. A breakdown of costs used to derive the lump sum amount, including but not limited to hourly rates, estimated travel expenses and other applicable rates, is specified in the Scope of Services. Upon completion of the work, Consultant shall submit its bill[s] for payment in a form approved by the City. The bill[s] shall identify the services completed and the amount charged.

3.2 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.

3.3 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Subconsultants.**

4.1 The Consultant shall be responsible for all payments to any sub-consultants and shall maintain responsibility for all work related to the Project.

4.2 Any sub-consultants used on the Project must have the prior written approval of the City Manager or his designee.

5. **City's Responsibilities.**

5.1 Furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.

5.2 Arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant (if applicable).

6. **Consultant's Responsibilities.**

6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Project, it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work. The City in no way assumes or shares any responsibility or liability of the Consultant or Sub Consultant under this agreement.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any City related matter.

8. **Termination.**

8.1 The City Manager for any reason may terminate this Agreement upon thirty (30) days written notice to the Consultant, or immediately with cause, with cause defined as an alleged violation of the Federal, State, County, or City law, as determined by the City Manager in his/her sole discretion, or such action which may detrimentally affect the health, safety, and welfare of the community, as determined by the City Manager in his/her sole discretion.

8.2 Upon receipt of the City's written notice of termination, Consultant shall stop work on the Project.

8.3 In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format specified by the City within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

9.1 The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by Exhibit B. The insurance carrier shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida.

9.2 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted, or in accordance to policy provisions. The City further reserves the right to solicit additional coverage, or require higher limits of liability as needed, and depending on the nature of scope, or level of exposure.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys' Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement, each party shall be responsible for their attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

12.1 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and

third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement. This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, including without limitation Sections 725.06 and 725.08, Fla. Stat., if applicable.

12.2 The provisions of this section shall survive termination of this Agreement.

12.3 Ten dollars (\$10) of the payments made by the City constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntary and knowingly acknowledged by the Consultant.

13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Edward A. Rojas
City Manager
City of Doral, Florida
8401 NW 53rd Terrace
Doral, Florida 33166

With a Copy to: Daniel A Espino, Esq.
City Attorney
Weiss Serota Helfman
Cole & Bierman, P.L.
2525 Ponce De Leon Boulevard, 7th Floor
Coral Gables, FL 33134

For The Consultant: Craig C. Clevenger, P.G.
Vice President
EE&G Environmental Services, LLC
5751 Miami Lakes Drive
Miami Lakes, FL 33014

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Ownership and Access to Records and Audits.**

16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

16.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.

16.3 Pursuant to section 119.0701, Consultant shall comply with public records laws, specifically to:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the public agency.

16.4 The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Nonassignability.**

17.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires.

18. **Severability.**

18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

19.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

21. **Waiver**

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions**

22.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition of Contingency Fees.**

23.1 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 Agreement, and that it has not paid or agreed to pay any person(s), 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 award or making of this Agreement.

24. **Counterparts**

24.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Consultant by and through its _____, whose representative has been duly authorized to execute same.

Attest:



Connie Diaz, City Clerk

CITY OF DORAL

By: 

Edward A. Rojas, City Manager

Date: 3.8.17

Approved As To Form and Legal Sufficiency for the Use
And Reliance of the City of Doral Only:



Weiss Serota Helfman Cole & Bierman, PL
City Attorney

CONSULTANT

By: EE&G Environmental Services, LLC

Its: Mr. Craig C. Clevenger, P.G. & V.P.

Date: 3/1/2017



Exhibit A

Scope of Services



EE&G Environmental Services, LLC

5751 Miami Lakes Drive
Miami Lakes, Florida 33014
Tel: (305) 374-8300
Fax: (305) 374-9004

February 6, 2017
Proposal No. 2016-3227.PSARA

City of Doral
c/o The Goldstein Environmental Law Firm, P.A.
One SE Third Avenue, Suite 2120
Miami, FL 33131
mgoldstein@goldsteinenvlaw.com

**Subject: Site Assessment Report Addendum
City of Doral Legacy Park Site
11300 NW 81st Terrace, Doral, Miami-Dade County, FL**

Dear Michael:

EE&G Environmental Services, LLC (EE&G) has prepared this proposal to prepare a Site Assessment Report Addendum/Remedial Action Plan (SARA/RAP) at the above-referenced property in response to the December 8, 2016 DERM correspondence issued by the Miami-Dade County Division of Environmental Resources Management (DERM).

This proposal was designed to provide supplemental soil and groundwater sampling as requested by DERM. However, EE&G proposes that we attempt to resolve this issue by providing only the backup paperwork and make an argument that the source of the material was naturally occurring muck that is common to this area of Doral, and therefore we should not be subject to the level of evaluation not required of the surrounding developments.

1.0 PROPOSED SCOPE OF SERVICES

Response to Comment 1a, b and c:

EE&G will notify DERM that the construction observed in 2008 pre-dated purchase by the City of Doral. City to provide date of purchase and any pertinent information to respond to this comment.

Response to Comment 1d:

- EE&G will retain a Florida-licensed environmental driller to advance 8 soil borings throughout the property. Soils will be collected in 0 to 0.5-feet and 0.5 to 2.0-feet BLS intervals. The 16 soil samples will be analyzed for Total Arsenic using EPA Method 6010.
- A subset of four soil samples (representing the 0 to 0.5-feet and 0.5 to 2.0-feet BLS intervals of two onsite locations) will also be analyzed for the following parameters:
 - Volatile Organic Compounds (VOCs) by EPA Method 8260
 - Polynuclear Aromatic Hydrocarbons (PAHs) by EPA Method 8270
 - Total Petroleum Hydrocarbons (TPHs) by Method FL-PRO
 - Total barium, cadmium, chromium, lead, mercury, selenium and silver by EPA Methods 6010 and 7470

Response to Comment 2:

- EE&G will supervise the installation of three shallow monitoring wells. Monitoring wells will be constructed of 1.5-inch diameter casings, with 10-feet of pre-packed well screen (set from approximately 1 to 11-feet BLS – adjusted to be screened across the top of the water table) and 2-feet of solid riser to reach the surface. Wells will be capped with water-tight lids, within a protective steel manhole.
- EE&G will return following a minimum 24-hour equilibration period and collect groundwater samples from the five newly-installed monitoring wells, which will be analyzed for Total Arsenic by EPA Method 6010.
- EE&G will have a surveyor measure the well top-of-casing elevations, and will collect depth-to-groundwater measurements, to determine site-specific groundwater flow direction.

Response to Comment 3:

- EE&G will collect two composite soil samples from either fill stockpiles originating from the Acosta Trailer, Inc. Yard or two composite soil samples from in-place material, which will be analyzed for the following parameters:
 - VOCs by EPA Method 8260
 - PAHs by EPA Method 8270
 - TPHs by Method FL-PRO
 - Total arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver by EPA Methods 6010 and 7470

Response to Comment 4:

City to provide copies of available disposal manifests will be provided.

Response to Comment 5:

City to provide clarification and support documentation that no arsenic-affected soils were exported to a City of Doral site.

Response to Comment 6:

EE&G will provide copies of available lithology logs will be provided.

Response to Comment 7:

EE&G will provide copies of available calibration logs and laboratory results will be provided.

Response to Comment 8:

EE&G will describe the number and locations of the subsamples for the composite stockpile sample, SP-1. Further characterization of the soil collected from the northern adjoining roadway construction area will be conducted, as described under Response to Comment 3 aforementioned.

Response to Comment 9:

City to provide pre- and post-excavation surveys.

Response to Comment 10:

EE&G will provide further clarification associated with the DERM total arsenic samples collected in the surrounding area.

2.0 DATA INTERPRETATION & REPORT PREPARATION

EE&G will evaluate the assessment findings and incorporate the assessment methodologies, findings, conclusions and recommendations into a Site Assessment Report Addendum (SARA), including associated figures, tables, attachments and supporting documentation.

A draft of the report will be provided to the Client for review. Upon authorization, EE&G will submit the final Professional Geologist signed/sealed SARA to the Miami-Dade County DERM for review.

3.0 FEE & TIME FRAME

Upon receipt of authorization to proceed, EE&G can complete the proposed scope of services within 20 business days. The SARA is due to DERM around March 8, 2017.

The fee for the proposed scope of services is as follows:

- \$2,000.00 to prepare a response to the DERM letter – without any supplemental sampling.
- \$8,000.00 to install the wells and borings, and have the laboratory analyze the samples.

Please do not hesitate to contact us if you have any questions concerning this proposal.
Sincerely,



Craig C. Clevenger, P.G.
Senior Hydrogeologist
EE&G

Attachments – Professional Services Agreement (PSA)

PROFESSIONAL SERVICES AGREEMENT BETWEEN

**THE CITY OF DORAL
AND**

EE&G ENVIRONMENTAL SERVICES, LLC

This Agreement is made on February 6, 2017, by The City of Doral, Client", and EE&G Environmental Services, LLC ("EE&G").

WITNESSETH

That for the considerations set forth below, the parties hereto do agree as follows:

1. **Description of Services:**

EE&G's SARA/RAP Proposal, dated February 6, 2017, attached and incorporated in it's entirety by reference.

2. **Period of Performance:**

20 business days from received authorization to proceed.

3. **Basis of Compensation:**

\$10,000.00; Lump Sum.

4. **Method of Invoicing:**

A final invoice will be generated monthly. Payment-in-full is due upon receipt of invoice.

5. **Professional Retainer:**

Waived upon receipt of Purchase Order.

6. **General Conditions:**

- a. Payments for invoices prepared by EE&G are due and payable upon delivery. EE&G reserves the right to apply a 1.5% monthly finance charge on all balances over 30 days outstanding.
- b. This Agreement may be terminated by either party hereto upon 10 days notice in writing to the other party. Upon termination, EE&G shall prepare and submit a final invoice for services rendered to the date of termination together with any termination expenses incurred.
- c. The parties hereto shall maintain in full force and effect comprehensive public liability insurance with coverage limits which are reasonable in light of the work to be undertaken, and workmen's compensation insurance as required by law.

- d. Any drawings and specifications developed pursuant to this Agreement are instruments of service, and as such the original documents, tracings, and field notes are and remain the property of EE&G regardless of whether the work for which they were prepared is executed.
- e. In the event that legal action is instituted to enforce any of the terms of this Agreement, the party, which does not prevail, shall pay the legal expenses of the prevailing party, including attorney's fees.
- f. The parties hereto each binds itself, its successors, executors, administrators and assigns to the other party to this Agreement and to the successors, executors, administrators and assigns of such other party in respect of all covenants of this Agreement.
- g. EE&G's liability for services to be rendered under this Agreement shall be limited to \$1,000,000, unless Client pays for the assumption of additional liability by EE&G as a separate line item in Article 3, *Basis of Compensation*.
- h. If applicable, Client agrees that EE&G shall not be responsible for liability caused by the presence or release of hazardous substances or petroleum products at the site. The Client will either make others responsible for liabilities due to such conditions, or will indemnify and save harmless EE&G from such liability. The provisions of this Article (6,h) shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their duly authorized officers on the date first written above.

EE&G Environmental Services, LLC

Client: The City of Doral

Sign: _____

Sign: _____

Name: Craig C. Clevenger, P.G.

Name: _____

Title: Vice President

Title: _____

Date: _____

Date: _____

Exhibit B

Insurance Requirements

