

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (herein "Agreement"), is made and entered into this 15th day of October, 2024, by and between the **CITY OF BELLE ISLE**, a municipal corporation of the State of Florida, whose address is 1600 Nela Avenue, Belle Isle, FL 32809 (hereinafter referred to as the "City") and **McDirmitt Davis & Company, LLC**, a corporation organized and existing under the laws of the State of Florida, located at 934 North Magnolia Avenue, Suite 100, Orlando, FL 32803 (herein "Contractor").

1.0 SERVICES OF CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" in the Contractor's Proposal dated September 26, 2024, attached hereto as **Exhibit "A"** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to CITY entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor has the knowledge, skill and experience to perform the services contemplated herein, that the Contractor has and will maintain all professional registration and licensing requirements (both corporate and individual for all required basic disciplines) and that Contractor covenants that it shall follow the highest professional standards in performing the services to City required hereunder. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances and serving the best interest of the CITY.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's Proposal which shall be incorporated herein by this reference as though fully set forth herein, and attached as Exhibit "A". In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

All services rendered hereunder shall be provided in accordance with all applicable ordinances, resolutions, statutes, rules, and regulations of CITY and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered.

2.0 COMPENSATION

2.1 Contract Sum.

For the services rendered pursuant to this Agreement, the Contractor shall be compensated in accordance with the "Schedule of Compensation" in the Contractor's Proposal hereto as **Exhibit "A"** and incorporated herein by this reference. Compensation may include reimbursement for actual and necessary expenses if specified in the Schedule of Compensation.

2.2 Method of Payments.

Unless some other method of payment is specified in the Schedule of Compensation, in any month in which Contractor wishes to receive payment, no later than the first (1st) working day of such month, Contractor shall submit to CITY in the form approved by CITY's City Manager, an invoice for services rendered prior to the date of the invoice. CITY shall pay Contractor for all expenses stated thereon which are approved by CITY pursuant to this Agreement no later than thirty days after the City's receipt of the invoice. Payments and disputes concerning payments under this Agreement shall be governed in accordance with the Local Government Prompt Payment Act as set forth in Part VII, Chapter 218, Florida Statutes.

3.0 PERFORMANCE/SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement execution of this Agreement. Contractor shall perform all services within the time period(s) established in the proposal and in compliance with the auditing requirements under general law.

3.3 Force Majeure.

The time period(s) specified in the Request for Proposals issued by the City for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including CITY, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against CITY for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

The term of this Agreement shall commence on the Effective Date and run until the services are completed which is estimated to be not longer than June 1, 2025. Further, the Contractor understands that it serves at the pleasure of the City Council of the City of Belle Isle and that the City is not obligated to utilize the services for any specific time period. The City

Council may terminate this Agreement at any time without penalty. The Contractor may terminate this Agreement at any time without penalty. Upon termination of services, the City shall remain obligated to pay the Contractor for previous services rendered and any services rendered during the transition to the City's new Contractor.

4.0 NO ASSIGNMENT/INDEPENDENT CONTRACTOR

4.1 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for CITY to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of CITY. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of CITY. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of CITY.

4.2 Independent Contractor.

Neither CITY nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. CITY shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of CITY and shall remain at all times as to CITY a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of CITY. CITY shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venture or a member of any joint enterprise with Contractor.

5.0 MISCELLANEOUS PROVISIONS

5.1 Florida Law.

The parties agree that this Agreement is governed by and shall be interpreted under the laws of the State of Florida and is binding upon the parties.

5.2 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any

subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

5.3 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

5.4 Legal Action.

Any and all legal action necessary arising out of or concerning this Agreement shall have its exclusive venue in a court of proper jurisdiction in Orange County, Florida. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. The City's maximum liability under this Agreement shall be the amount of compensation it is required to pay to Contractor for services properly rendered hereunder.

5.5 Conflict of Interest.

Contractor agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement or which would violate or cause others to violate Part III, Chapter 112, Florida Statutes, relating to ethics in government. No officer or employee of CITY shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

5.6 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

5.7 Notice.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and

either served personally or sent by prepaid, first-class mail, in the case of CITY, to CITY Manager, via email at rickr@belleislefl.gov and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

5.8 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. To the extent there are any conflicts between the terms of this Agreement and the Proposal attached as Exhibit A, the terms of this Agreement shall control.

5.9 Integration; Amendment.

It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

5.10 Insurance.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement, including any extension thereof, the following policies of insurance:

A. Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than a combined single limit of One Million Dollars (\$1,000,000.00).

B. Workers compensation insurance for its employees and other applicable insurance as may be required by the State of Florida.

C. Errors and Omissions Insurance. A policy of professional liability insurance written on a claims made basis in an amount not less than One Million Dollars (\$1,000,000.00). Except for the policy of professional liability insurance, all of the above policies of insurance shall be primary insurance and shall name City, its officers, employers and agents as additionally insured. Except for the policy of professional liability insurance, the insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Except for the policy of professional liability insurance, all of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled, the attorney shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the City.

5.11 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

5.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

5.13 Indemnification. Contractor shall indemnify and hold the City and its officials, officers, employees, and agents harmless from all claims, losses, expenses, and damages, including, but not limited to, attorneys' fees and litigation costs at trial and appellate levels, for personal injury, sickness, disease, death and real property damage, and personal property damages that may arise or do arise solely or partially from acts, errors, omissions, negligent acts, recklessness, wrongful acts, or gross negligence of the Contractor or its employees, subcontractors, or agents (or any combination thereof) during the performance of services under this Agreement. This Section shall survive expiration and termination of this Agreement.

5.14 Sovereign Immunity. Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the City and its officials, officers, employees and agents as set forth in the Constitution and the Laws of the State of Florida, including without limitation, under Section 768.28, Florida Statutes.

5.15 Public Records Laws.

Contractor acknowledges and agrees that the CITY is a public entity that is subject to Florida's public records law and as such, documents in Contractor's control and possession (including subcontractors) relating to the services performed for the CITY are subject to inspection under Chapter 119, Florida Statutes, unless otherwise exempt, excepted, or a record does not meet the definition of a public record by applicable law. Specifically, Contractor shall comply with the requirements of a contractor under Section 119.0701, Florida Statutes. Upon request by the CITY, the Contractor shall at its expenses, within three (3) business days, supply copies of said public records to the CITY. Since the CITY's documents are of utmost importance to the conduct of CITY's business and because of the legal obligations imposed upon the CITY and Contractor by the Public Records Law, Contractor agrees that it shall, under no circumstances, withhold possession of any public records, including originals, copies, or electronic images thereof when such are requested by the CITY, regardless of any contractual or other dispute that may arise between Contractor and CITY. Upon termination of this Agreement, termination of Contractor's work under this Agreement,

or acceptance of the Work by the CITY, whichever occurs first, the Contractor shall, at Contractor's expense, turnover the original or copy of all public records in the Contractor's (including sub-consultants and subcontractor's) control and possession to the CITY, except as otherwise directed by the CITY. Contractor hereby indemnifies the CITY concerning any claims, damages, suits, judgments, losses, expenses, and penalties arising out of or concerning Contractor and its subcontractors' violation of the Public Records Law or this paragraph, including for the CITY's attorneys' fees and costs. This paragraph survives termination and expiration of this Agreement.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSSTODIAN OF RECORDS AT: Yolanda Quiceno, CMC City Clerk, City of Belle Isle, 1600 Nela Avenue, Belle Isle, Florida 32809; E-mail – yquiceno@belleislefl.gov; Telephone – (407) 851-7730.

5.16 Entire Agreement. The terms of this Agreement are intended by the parties as a final expression of their agreement with respect to such terms herein, and also as a complete and exclusive statement of such terms. There are no other provisions, terms, conditions or obligations. Provided however, the terms of this Agreement may be subsequently modified in writing upon the mutual consent of the parties.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

CITY OF BELLE ISLE

McDirmitt Davis & Company, LLC

Rick Rudometkin, City Manager

Approved by City Council on
October 15, 2024
ATTEST:

BY: _____
Name/Title

Yolanda Quiceno, City Clerk