

**MASTER CONTINUING PROFESSIONAL CONSULTING AGREEMENT FOR
ARCHITECTURAL, ENGINEERING, PLANNING, AND VARIOUS CONSULTING
PROFESSIONAL SERVICES BETWEEN THE TOWN OF DUNDEE, FLORIDA AND
CONSULTANT, RAYL ENGINEERING AND SURVEYING, LLC, CONTRACT
ADDENDUM**

This Town of Dundee Master Continuing Professional Consulting Agreement for Architectural, Engineering, Planning, and Various Consulting Professional Services Between the Town of Dundee, Florida and Consultant, Rayl Engineering and Surveying, LLC, Contract Addendum ("Addendum") is agreed upon by the parties and appended to the agreement, deliverable, purchase, order, form, service, package and contract (collectively, the "Contract Documents"), identified below by reference by title, between the Town of Dundee, Florida, a Florida municipal corporation (the "Town") and the following Consultant (collectively, the "Parties"):

Consultant: Rayl Engineering and Surveying, LLC
810 East Main Street
Bartow, FL 33830

Name of Contract: *RFQ-23-01; MASTER CONTINUING PROFESSIONAL CONSULTING AGREEMENT FOR ARCHITECTURAL, ENGINEERING, PLANNING, AND VARIOUS CONSULTING PROFESSIONAL SERVICES BETWEEN THE TOWN OF DUNDEE, FLORIDA AND CONSULTANT (hereinafter collectively referred to as the "Contract").*

§ 1. Factual Recitals. The factual recitals and referenced exhibit(s) provided for by this Addendum are incorporated herein as true and correct statements which form a factual and material basis for the entry into and/or execution of the Contract which includes, but shall not limited to, this Addendum between the Consultant and Town, as follows:

(a) the Town is a Florida municipal corporation vested with home rule authority pursuant to the Municipal Home Rule Powers Act (F.S. Chapter 166) and Article VIII, §2 of the Florida Constitution; and

(b) pursuant to Section 2(b), Article VIII of the Florida Constitution and Chapter 166, Florida Statutes, the Town is vested with governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, including the general exercise of any power for municipal purposes; and

(c) Section 166.021, Florida Statutes and Section 2(b), Article III of the Florida Constitution authorize the Town to enter into the Contract which includes, but is not limited to, this Addendum with the Consultant; and

(d) a copy of the Contract, which is fully-executed by the parties, is attached to

this Addendum as **Composite Exhibit “A”** and made a part hereof by reference; and

(e) Consultant is an active Florida Limited Liability Company authorized to transact business in the State of Florida; and

(h) Consultant represents and warrants that it is authorized to transact business in the State of Florida; and

(i) Consultant and Town acknowledge, represent, and agree that the Town will be included and identified as an additional insured under any applicable Comprehensive General Liability policy and Automobile Liability Insurance policy related to the services which are the subject of the Contract and/or Contract Documents; and

(j) Consultant and Town acknowledge and represent that certain amendments to the Contract are desirable and necessary in order to ensure compliance with applicable Florida law; and

(k) Consultant acknowledges and agrees that this Addendum and the Contract are governed by Florida law; and

(l) Consultant and Town acknowledge and agree that the Consultant’s entry into the Contract (see **Exhibit “A”**) is contingent upon the terms and conditions set forth in this Addendum; and

(m) Consultant affirms, agrees, and represents that, in consideration for the Town’s payment(s) and entry into the Contract and this Addendum, Consultant agreed to perform any and all service(s) in accordance with Applicable Law which includes, but is not limited to, Chapters 119, 267 and 668 of the Florida Statutes (2023); and

(o) Consultant and Town acknowledge, affirm, and agree that the terms and conditions set forth in this Addendum governs the contractual relationship and, in the event of any conflict between this Addendum and the Contract (see **Exhibit “A”**), this Addendum is the controlling document; and

(q) Consultant acknowledges, agrees, and represents that, prior to executing this Addendum, it has reviewed this Addendum with its legal counsel and fairly negotiated this Addendum at arm’s length; and

(r) Town acknowledges that it is in the best interests and will promote the health, safety and welfare of the citizens and residents of the Town of Dundee, Florida, to enter into the Addendum; and

(s) Consultant and Town acknowledge, represent, and agree that mutual consideration has been given herein in exchange for the entry into the Addendum.

§ 2. Definitions. Words used in this Addendum and/or Contract (see **Exhibit “A”**), as well as any and all attachment(s) and/or exhibit(s) incorporated herein and made a part hereof, shall possess their everyday and ordinary meaning(s), provided however, that where one (1) of the following listed terms is used, such term(s) shall possess the corresponding meaning, as follows:

(a) *“Applicable Law”* means the Town of Dundee Charter, Town of Dundee Code of Ordinances, Town of Dundee Land Development Code, and any and all applicable statutes, laws, rules, regulations, charter provisions, ordinances, and resolutions of the United States of America, State of Florida, Polk County, Town of Dundee, and any and all other public authority which may be applicable.

(b) *“Town”* means the Town of Dundee, Florida, a Florida municipal corporation, and/or its authorized representative vested with home rule authority pursuant to the Municipal Home Rule Powers Act, Chapter 166 of the Florida Statutes, and Article VIII, §2 of the Florida Constitution; and the Town is therefore vested with governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, including the general exercise of any power for municipal purposes.

(c) *“Effective Date”* means, for purposes of calculating time periods and the commencement of the term of the Contract, the date on which the Contract which includes, but shall not be limited to, this Addendum is approved and executed by the Town Representative as authorized, at a duly notice public meeting, by the Town Commission.

(d) *“Term”* means the duration of the Contract which shall commence on the Effective Date and shall expire and/or terminate in accordance with the provisions set forth in the Contract.

§ 3. Primacy of Addendum.

This Addendum contains specific terms and conditions that are applicable to purchases of goods and services made by the Town of Dundee, Florida, a municipal corporation organized and existing under the laws of the State of Florida. Notwithstanding anything in the Contract (see **Exhibit “A”**) to the contrary, whether expressly made or determined to exist by implication, the terms of this Addendum shall be primary and shall control over any conflicting term, condition, duty, and implication found in the Contract.

§ 4. Governing Law; Home Venue Privilege.

The Contract and this Addendum (collectively referred to as the “Agreements”) between the Parties, are made in the Town of Dundee, County of Polk, State of Florida, and shall be governed solely by the internal laws of the State of Florida. The Parties agree that venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of, concerns, or relates to the Agreements, any and all transactions contemplated thereunder, the performance thereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall lie exclusively in courts with geographic jurisdiction over Polk County, Florida, which, as of the effective date of the Agreements, are the County Court in and

for Polk County, Florida, the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida and the United States District Court for the Middle District of Florida, Tampa Division. The Parties waive any objection to jurisdiction and venue in such courts.

§ 5. Indemnification.

To the fullest extent permitted by Applicable Law, and in consideration of the amount stated on any Task Order, Consultant shall indemnify and hold harmless the Town of Dundee, Florida (the "Town") and its officers and employees, from all 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 other persons employed or utilized by the Consultant in the performance of the Agreements and in each Task Order issued pursuant to the Agreements.

Without limiting the generality of the foregoing, the Town and the Consultant agree that, as used in this indemnification:

(a) the phrase "*liabilities, damages, losses, and costs*" shall include by way of explanation and not of limitation: (1) any and all charges or expenses for professional services inclusive of the professional services of others; (2) any and all charges or expenses incurred in court and dispute resolution proceedings including the charges and expenses of mediators; (3) any and all monetary, tangible and real liabilities, judgments, required payments and voluntary settlement payments for bodily injuries, sickness, disease, death, and injury to or destruction of tangible property including the loss of use resulting therefrom; and (4) any and all monetary, tangible and real liabilities, damages, losses and costs incurred, received, or sustained by any person or persons during or on account of any operations or matters connected with the Agreements, any Task Order issued pursuant to the Agreements, and any project, task or work performed hereunder;

(b) the phrase "*reasonable attorneys' fees*" shall include by way of explanation and not of limitation any and all fees, charges, and expenses for the professional services of attorneys and their offices in any and all pre-suit, trial, appellate and bankruptcy proceedings or otherwise; and

(c) the phrase "*negligence, recklessness, or intentionally wrongful conduct*" shall include by way of explanation and not of limitation the negligent, reckless, or intentional violation of any applicable federal, state, county, or local law, by-law, statute, ordinance or regulation and the negligent, reckless, or intentional acts or omissions of the Consultant, any person or organization directly or indirectly employed by Consultant, and anyone for whose acts any of them may be liable, arising from, relative to, or caused by the performance of any services as may be described or provided in the Agreements, any Task Order issued pursuant to the Agreements, or in any project, task or work performed hereunder.

In any and all claims against the Town, or any of its officers and employees, by any person employed or utilized by the Consultant in the performance of the Agreements or in the performance of any Task Order issued hereunder, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or

for the Consultant or any other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the Town, the Consultant or any other person or organization.

(d) In the event of any claims or suits which fall within the foregoing indemnities, payment of any amount due pursuant thereto shall, after receipt of written notice by Consultant from the Town that such amount is due, be made by Consultant prior to the Town being required to pay same, or in the alternative, the Town, at the Town's option, may make payment of an amount so due and the Consultant shall promptly reimburse the Town for same, together with interest thereon at a rate consistent with §55.03, *Florida Statutes (2024)*, from the day of the Town's payment.

The Town and the Consultant agree that to the extent the written terms of this indemnification conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08, Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes, to contain any limited conditions or limitations of liability, and to not contain any unenforceable or prohibited term or terms, such that this indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida law.

§ 6. Sovereign Immunity; Limitations of City's Liability.

(a) Town is a sovereign Florida municipal government. The Parties agree that nothing contained in the Agreements shall be construed to waive the Town's sovereign immunity. With respect to the matter of compensation for work performed, or the price of goods sold, the Parties agree that the total liability of the Town to the Consultant shall not exceed the agreed-upon price established in the Agreements which shall be subject to annual appropriation performance contingencies.

(b) Notwithstanding any other provision set forth in the Agreements, nothing contained in this Addendum shall be construed as a waiver of the Town's right to sovereign immunity under Section 768.28, Florida Statutes (2023), or other limitations imposed on Town's potential liability under state or federal law regardless of whether such claims are based in tort, contract, statute, strict liability, negligence, product liability or otherwise. As such, Town shall not be liable under the Agreements for punitive damages or interest for the period before judgment. **This Section shall survive termination of the Agreements.**

§ 7. Force Majeure.

Delays in performance due to fire; flood; hurricane; tornado; earthquake; windstorm; unavailability of materials or equipment; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; pandemic; or act of God, shall be deemed events of "Force Majeure" and such delays shall be excused in the manner herein provided. If a Party is delayed in any work or performance pursuant to the Agreements due to the occurrence of an event of Force

Majeure, the date for action required or contemplated by the Agreements shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the incurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

§ 8. Assignment by Consultant.

The Agreements shall not be assigned by the Consultant, or any successor thereto, without the prior written consent of the Town which shall not be unreasonably withheld.

§ 9. Severability.

If any term, covenant, or condition of the Agreements or the application thereof to any person or circumstances shall to any extent, be deemed by a court of competent jurisdiction to be lawfully invalid or unenforceable, the remainder of the Agreements or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, and condition of the Agreements shall be valid and enforced to the fullest extent permitted by law. The Town and Consultant further agree to reform the Agreements to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

§ 10. Construction.

The Town and Consultant acknowledge that the Agreements have been fairly negotiated by each party's respective legal counsel and at arm's length; and, as such, the Agreements shall be interpreted in accordance with the terms and conditions contained herein.

§ 11. Attorneys' Fees.

In the event either the Town or the Consultant brings an action against the other to interpret and/or enforce the Agreements and/or any condition, covenant and/or provision herein, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs, including, without limitation, any such fees or costs related to appellate or bankruptcy proceedings.

§ 12. Specific Modifications to Contract.

Without limiting the effectiveness of any of the foregoing provisions in this Addendum, the following specific modifications are made to the text of the Contract:

- (a) The definition of "*Indemnification*" is deleted from *Article I* of the Contract in its entirety.
- (b) *Article II* of the Contract is amended to read, as follows:

It being the intent of this Agreement to provide a general basis for performing architectural,

engineering, planning, and various professional consulting services, as yet not fully defined. Any service, project, job and/or task(s) shall be performed in compliance with the terms, conditions and covenants set forth by this Agreement and/or any TASK ORDER(S) issued hereunder; and, prior to the commencement of any service, project, job and/or task(s) by the CONSULTANT, the TOWN and CONSULTANT shall mutually agree in writing as to the starting date, scope of services and/or work, deliverables, time for completion, and any other term(s) and/or condition(s), which are not set forth in this Agreement, as related to a specific service, project, job and/or task(s) (hereafter referred to as the "TASK ORDER"). This Agreement shall continue in full force and effect for a period of **five (5) years** beginning on the Effective Date or until terminated in accordance with **Article XVIII** of this Agreement.

At the discretion of the Town Manager, this Agreement may be extended for an additional five (5), one (1) year term(s) for a total of ten (10) successive years without re-advertising under the Act. The above time periods may also be extended at the discretion of the Town Manager to complete any TASK ORDER(S) already in progress. For purposes of this Agreement, the phrase *in progress* shall be interpreted to mean that a TASK ORDER has been issued by the TOWN and accepted by the CONSULTANT.

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IN WITNESS WHEREOF, the parties have set their hands hereto on the date indicated:

Consultant:

Executed this 4th day of October, 2024

By: _____

Name: Alan L. Rayl

Title: Owner

STATE OF Florida
COUNTY OF Polk

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 4th day of October, 2024, by Alan L. Rayl, as owner, on its behalf, who is personally known to me or who has produced _____ as identification.

Valerie Wheatley
Notary Public, State of Florida
Printed Name: Valerie Wheatley

My commission expires: 9/19/2025



Town of Dundee, Florida:

Executed this ____ day of _____, 2024

By: _____
Samuel Pennant, Mayor

Attest:

Lita O'Neill, Town Clerk

Approved as to Form and Legal Sufficiency:

Frederick J. Murphy, Town Attorney