

## **PROFESSIONAL ENGINEERING SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between (name of firm) *whose address is (mailing address)*, hereinafter called the "CONSULTANT" and the City of Green Cove Springs, a political subdivision of Florida, by and through its City Council, hereinafter referred to as "CITY", whose address is *City of Green Cove Springs, 321 Walnut Street, Green Cove Springs, Florida 32043*.

### **WITNESSETH:**

**WHEREAS**, the CITY has identified the need to retain a pool of professional engineers for consulting purposes to assist City personnel; and

**WHEREAS**, the CITY desires to engage consulting engineering firms to provide general consulting and engineering services on a continuing Agreement basis for projects with construction costs of \$1,000,000 or less, study activity fees of \$50,000 or less, and work of a specified nature, as may be required; and

**WHEREAS**, the CITY issued a *Request for Qualifications (RFQ) No. LC 2021-04-*; and

**WHEREAS**, the CITY received (**number of bids**) replies from consultants in response to the RFQ; and

**WHEREAS**, the CONSULTANT submitted a "Statement of Qualifications" that is attached hereto and incorporated herein as Exhibit "A"; and

**WHEREAS**, the City Council accepted staff's recommendation to award contracts to (number of firms awarding contracts to) responsive firms; and

**WHEREAS**, the CONSULTANT is competent and qualified to furnish professional engineering services to the CITY and desires to provide professional services according to the terms and conditions stated herein; and

**WHEREAS**, the CITY has followed the selection and negotiation process in accordance with the Consultant's Competitive Negotiation Act (CCNA), Chapter 287.055, Florida Statutes.

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, the CITY and the CONSULTANT agree as follows:

1. **SERVICES** – The CITY does hereby retain the CONSULTANT to furnish professional services and perform those tasks as further described, but not limited to those in the RFQ No. LC 2021-04. Required services shall be specifically enumerated, described and depicted in the Work Orders authorizing performance of the specific project, task or study. This Agreement standing alone does not authorize the performance of any work or require the CITY to place any orders for work.

2. **TERM** – The Term of this Agreement will commence upon the date of City Council approval as first written above and will be effective for one (1) year with an option to renew for four (4) successive one (1) year periods, subject to the mutual consent of the CITY and the CONSULTANT, unless otherwise amended or terminated as provided herein. Expiration of the term of this Agreement shall have no effect upon Work Orders issued pursuant to this Agreement and prior to the expiration date. Obligations entered therein by both parties shall remain in effect until completion of the work authorized by the Work Order.
  
3. **AUTHORIZATION FOR SERVICES**
  - a. Authorization for performance of professional services by the CONSULTANT under this Agreement shall be in the form of written Work Orders issued and executed by the CITY. Acceptance of the Work Order shall be evidenced by CONSULTANT’S execution of the Work Order. A “Sample Work Order” is attached hereto as Exhibit “C.” Each Work Order shall describe the services required, state the dates for commencement and completion of work and establish the amount and method of payment. The Work Orders will be issued under and shall incorporate the terms of this Agreement. The CITY shall have the right to either increase or decrease the services to be provided by the CONSULTANT as outlined in the Work Order, at any time and for any reason, upon written notice to the CONSULTANT in the form prescribed in Section 25. In the event that an addition to the Work Order is negotiated, the CONSULTANT shall be fully compensated. In the event that a reduction to the Work Order is requested, the CONSULTANT shall be fully compensated for work performed thus far. All modifications to a Work Order must be reduced to writing and signed by both the CITY and the CONSULTANT. The CITY makes no covenant or promise as to the number of available projects or that any project will be assigned to the CONSULTANT by the CITY during the life of this Agreement. The CITY reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by the CITY to be in the best interest of the CITY to do so.
  
  - b. City Department Directors are authorized to initiate Work Orders and serve as Project Managers; however, the City Manager or Designee shall sign and approve Work Orders and amendments and modifications to Work Orders on behalf of the CITY, in accordance with the adopted Purchasing Policies and Procedures of the City of Green Cove Springs.
  
4. **TIME FOR COMPLETION** – The services to be rendered by the CONSULTANT shall be commenced, as specified in such Work Orders as may be issued hereunder and shall be completed within the time specified therein. In the event the CITY determines that significant benefits would accrue from expediting an otherwise established time schedule for completion of services under a given Work Order, that Work Order may include a negotiated schedule of incentives based on time savings.
  
5. **COMPENSATION** – The CITY agrees to compensate the CONSULTANT for the professional services called for under this Agreement on either a "Lump Sum Basis," or on an "Hourly Rate Basis." If a Work Order is issued under an "Hourly Rate Basis", then CONSULTANT shall be compensated in accordance with their submitted "Rate Schedule", which shall be updated annually. If a Work Order is issued under a "Lump Sum Basis", then the applicable Work Order Lump Sum Fee amount shall include any and all reimbursable expenses.

6. **REIMBURSABLE EXPENSES** – If a Work Order is issued on an "Hourly Rate Basis", then reimbursable expenses are in addition to the hourly rates. Reimbursable expenses are subject to the applicable "Not-to-Exceed" or "Limitation of Funds" amount set forth in the Work Order and to conditions, restrictions and limitations of Section 112.061, Florida Statutes. Reimbursable expenses may include actual expenditures made by the CONSULTANT, his employees or his professional associates in the interest of the Project for the expenses listed in the following paragraphs:

- a. Expenses of transportation, when traveling in connection with the Project, based on Sections 112.061 (7) and (8), Florida Statutes, or their successor; actual cost of long-distance calls and telegrams; and fees paid for securing approval of authorities having jurisdiction over the Project.
  - 1. Actual expense of reproductions, postage and handling of drawings and specifications.
  - 2. If authorized in writing in advance by the CITY, the cost of other expenditures made by the CONSULTANT in the interest of the Project provided such expenditures are in accordance with the Scope of Services and Work Order as approved by the CITY.

7. **PAYMENT AND BILLING**

- a. As a condition precedent for any payment, the CONSULTANT shall submit monthly, an invoice to the CITY requesting payment for services properly rendered and expenses due. The CONSULTANT'S invoice shall describe with reasonable particularity each service rendered, the date thereof, the time expended if such services were rendered pursuant to an Hourly Rate Basis and the person's position rendering such service. The CONSULTANT'S invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought as the CITY may require. Each invoice shall bear the signature of the CONSULTANT, which signature shall constitute the CONSULTANT'S representation to the CITY that the services indicated in the invoice have reached the level stated, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred in accordance with this Agreement, that all services provided are for a public purpose, that all obligations of the CONSULTANT covered by prior invoices have been paid in full, and that the amount requested is currently due and owing, there being no reason known to the CONSULTANT that payment of any portion thereof should be withheld. Submission of the CONSULTANT's invoice for final payment will be clearly marked Final Invoice and shall further constitute the CONSULTANT'S representation to the CITY that, upon receipt by the CONSULTANT of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the services provided, will be paid in full.
- b. If the Scope of Services to be performed by a Work Order is clearly defined in advance of the work effort, the Work Order shall, at the sole discretion of the CITY, be issued on a "Lump Sum Basis." Upon the CONSULTANT'S acceptance of the Work Order, the CONSULTANT shall perform all work required by the Work Order, but in no event, shall the CONSULTANT be paid more than the negotiated "Lump Sum Fee" amount stated therein.

- c. If the Scope of Services to be performed by a Work Order is not clearly defined, the Work Order may, at the sole discretion of the CITY, be issued on an "Hourly Rate Basis" and contain a "Not-to Exceed" amount. Upon the CONSULTANT'S acceptance of the Work Order, the CONSULTANT shall perform all work required by the Work Order, but in no event, shall the CONSULTANT be paid more than the "Not-to-Exceed" amount stated therein.
- d. If the Scope of Services to be performed by a Work Order is not clearly defined, the Work Order may, at the sole discretion of the CITY, be issued on an "Hourly Rate Basis" and contain a "Limitation of Funds" amount. Upon the CONSULTANT'S acceptance of the Work Order, the CONSULTANT shall perform all work required by the Work Order, but in no event, shall the CONSULTANT be authorized to exceed that amount without the prior written approval of the CITY. Said approval, if given by the CITY, shall indicate a new "Limitation of Funds" amount. The CONSULTANT shall advise the CITY whenever the CONSULTANT has incurred expenses on any Work Order that equals or exceeds eighty percent (80%) of the "Limitation of Funds" amount.
- e. For Work Orders issued on a "Lump Sum Basis," the CONSULTANT may invoice the amount due based on the percentage of total Work Order services actually performed and completed, but in no event, shall the invoice amount exceed a percentage of the "Lump Sum Fee" amount equal to a percentage of the total services actually completed.
- f. For Work Orders issued on an "Hourly Rate Basis" with a "Not-to-Exceed" amount, the CONSULTANT may invoice the amount due for actual work hours performed, but in no event, shall the invoice amount exceed a percentage of the "Not-to-Exceed" amount equal to a percentage of the total services actually completed.
- g. For Work Orders issued on an "Hourly Rate Basis" with a "Limitation of Funds" amount, the CONSULTANT may invoice the amount due for services actually performed and completed.
- h. Each Work Order, whether issued on a "Lump Sum Basis" or an "Hourly Rate Basis" with a "Not-to-Exceed" amount shall be treated separately.
- i. The CITY shall make payments to the CONSULTANT when requested as work progresses for services furnished, but not more than once monthly. Each Work Order shall be invoiced separately. The CONSULTANT shall render to the CITY, at the close of each calendar month, an itemized invoice properly dated, describing any services rendered, the cost of the services, the name and address of the CONSULTANT, Work Order Number, Purchase Order Number, and all other information required by this Agreement.
- j. Invoices shall be reviewed and approved by the Project Manager prior to payment. The original invoice shall be sent to:

City of Green Cove Springs  
Accounts Payable  
321 Walnut Street  
Green Cove Springs, Florida 32043

8. **GENERAL TERMS OF PAYMENT AND BILLING**

- a. Payments for all sums properly invoiced shall be made upon satisfactory completion of work required hereunder. Upon final acceptance of the work by the CITY, the CONSULTANT may invoice the CITY for the full amount of compensation provided for under the terms of this Agreement, less any amount already paid by the CITY. The CITY shall pay the CONSULTANT within forty-five (45) days from receipt of a correct invoice.
- b. The CITY may perform or have performed an audit of the records of the CONSULTANT either within one (1) year following project completion and final payment for services covered under this Agreement, or at any time during the project term. This audit would be performed at a time mutually agreeable to the CONSULTANT and the CITY either subsequent to the close of the final fiscal period in which the last work is performed or during the term of this Agreement. Total compensation to the CONSULTANT may be determined subsequent to an audit as provided for in Subsections (b) and (c) of this Section, and the total compensation so determined shall be used to calculate final payment to the CONSULTANT. Conduct of this audit shall not delay final payment as provided by Subsection (a) of this Section.
- c. The CONSULTANT agrees to maintain all books, documents, papers, accounting records and other evidences pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at the CONSULTANT'S office at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for audit or inspection as provided for in Subsection (b) of this Section or as required by Chapter 119, Florida Statutes, and schedules established by the Bureau or Archives and Record Management for the State of Florida, whichever shall be greater. For all questions related to Public Records during the term of this agreement, Erin West, City Clerk shall serve as the City's contact.
- d. In the event any audit or inspection conducted after final payment, but within the period provided in Subsection (c) of this Section reveals any overpayment by the CITY under the terms of the Agreement, the CONSULTANT shall refund such overpayment to the CITY within thirty (30) days written notice by the CITY, in the form prescribed in Section 25.

9. **RESPONSIBILITIES OF THE CONSULTANT**

- a. The CONSULTANT shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by the CONSULTANT under this Agreement. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature.

- b. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement nor of any cause of action arising out of the performance of this Agreement. The CONSULTANT shall be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONSULTANT'S negligent or wrongful performance of any of the services furnished under this Agreement.

10. **OWNERSHIP OF DOCUMENTS**

- a. The CITY shall have the unlimited rights, for the benefit of the City, in all original drawings, designs, specifications, notes and other consultant's work produced in the performance of this Agreement, or in contemplation thereof, and all as-built drawings produced after completion of the work, including the right to use same on any other City work. All documents, including drawings and specifications prepared by the CONSULTANT pursuant to this Agreement shall be instruments of service in respect of the project. They are not intended or represented to be suitable for reuse by the CITY or any others for any other project. Reuse for another project without written verification or adoption by the CONSULTANT for specific purpose intended will be at the CITY's risk. Any such verification or adaptation, if required by the CITY will entitle the CONSULTANT to further compensation at rates to be agreed by the CITY and the CONSULTANT. The original set and one additional copy of plans and specifications shall be delivered to and become the property of the CITY upon completion of the work by the CONSULTANT.

11. **TERMINATION**

- a. The CITY may by giving written notice to the CONSULTANT, in the form prescribed in Section 25, terminate this Agreement or any Work Order issued hereunder, in whole or in part, immediately, for cause, due to the failure of the CONSULTANT to fulfill its Agreement obligations. The CITY shall be the sole judge of non-performance. Further, either the CITY or the CONSULTANT may terminate this Agreement for convenience, with a thirty (30) day written notice, in the form prescribed in Section 25. The City Manager is authorized to terminate this Agreement on behalf of the CITY as directed by the City Council. Upon receipt of such written notice, the CONSULTANT shall:
  - (1) Immediately discontinue all services affected unless the notice directs otherwise, and
  - (2) Promptly deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by the CONSULTANT in performing this Agreement, whether completed or in process.

- b. If the termination is for the convenience of the CITY, the CONSULTANT shall be paid compensation for services performed to the date of termination within thirty (30) days after delivery of such work and upon receipt of an invoice. If this Agreement calls for the payment based on a “Lump Sum Basis”, the CITY shall pay the CONSULTANT no more than a percentage of the “Lump Sum Basis” amount equivalent to the percentage of the completion of work, as determined solely and conclusively, contemplated by this Agreement.
  - c. If the termination is due to the failure of the CONSULTANT to fulfill its Agreement obligations, the CITY may take over the work and ensure its completion by either other Agreements or in a manner that is in the best interest of the CITY to do so. In such case, the CONSULTANT shall be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby. The CONSULTANT shall not be liable for such additional costs if the failure to perform the Agreement arises without any fault or negligence of the CONSULTANT; provided, however, that the CONSULTANT shall be responsible and liable for the actions of its subconsultants, agents, employees and persons and entities of a similar type or nature. Such causes may include acts of God or of the public enemy, acts of the CITY in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without any fault or negligence of the CONSULTANT.
  - d. If, after notice of termination for failure to fulfill its Agreement obligations, it is determined that the CONSULTANT had not so failed, the termination shall be conclusively deemed to have been affected for the convenience of the CITY. In such event, adjustment in the Agreement price shall be made as provided in Subsection (b) of this Section.
  - e. If funds to finance this Agreement become unavailable, the CITY may terminate the Agreement with no less than twenty-four (24) hours written notice to the CONSULTANT in the form prescribed in Section 25. The CITY will be the final authority as to the availability of funds. The CITY will pay the CONSULTANT for all work completed prior to any notice of termination.
  - f. The rights and remedies of the CITY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.
12. **AGREEMENT AND WORK ORDER IN CONFLICT** – Whenever the terms of this Agreement conflict with any Work Order issued pursuant to it, the Agreement shall prevail.
13. **NO CONTINGENT FEES** – The CONSULTANT warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the CONSULTANT 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 bonafide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award or making of this Agreement. For the breach or violation of this provision, the CITY shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

14. **CONFLICT OF INTEREST**

- a. The CONSULTANT agrees that it will not contract for or accept employment for the performance of any work or service with any individual, business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the CITY.
- b. The CONSULTANT agrees that it will neither take any action nor engage in any conduct that would cause any City employee to violate the provisions of Chapter 112, Florida Statutes, relating to ethics in government.
- c. In the event that the CONSULTANT causes or in any way promotes or encourages a City officer, employee, or agent to violate Chapter 112, Florida Statutes, the CITY shall have the right to terminate this Agreement pursuant to Section 11.

15. **ASSIGNMENT** – This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the other party and in such cases only by a document of equal dignity herewith.

16. **SUBCONSULTANTS** – In the event that the CONSULTANT, during the course of the work under this Agreement, requires the services of any sub-CONSULTANT or other professional associates in connection with services covered by this Agreement, the CONSULTANT must first secure the prior express written approval of the CITY. If sub-CONSULTANT or other professional associates are required in connection with the services covered by this Agreement, the CONSULTANT shall remain fully responsible for the services of sub-CONSULTANTS or other professional associates.

**INDEMNIFICATION**

Notwithstanding the provisions of s. 725.06, if a design professional provides professional services to or for a public agency, the agency may require in a professional services contract with the design professional that the design professional indemnify and hold harmless the agency, 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 design professional and other persons employed or utilized by the design professional in the performance of the contract.

(2) Except as specifically provided in subsection (1), a professional services contract entered into with a public agency may not require that the design professional defend, indemnify, or hold harmless the agency, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding, and any such contract provision shall be void as against the public policy of this state.

(3) "Professional services contract" means a written or oral agreement relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction, improvement, alteration, repair, maintenance, operation, management, relocation, demolition, excavation, or other facility, land, air, water, or utility development or improvement.

(4) "Design professional" means an individual or entity licensed by the state who holds a current certificate of registration or is qualified under chapter 481 to practice architecture or landscape architecture, under chapter 472 to practice land surveying and mapping, or under chapter 471 to practice engineering, and who enters into a professional services contract.

(5) This section does not affect contracts or agreements entered into before the effective date of this section.



**INSURANCE** – The CONSULTANT will, for the life of this Agreement, maintain insurance in the types and amounts detailed in Exhibit “C”. The CONSULTANT will provide the CITY with Certificates of Insurance that demonstrate coverage in at least the types and amount required herein and that the CITY shall be notified in writing at least thirty (30) days before any such insurance is cancelled. The CONSULTANT shall certify that all subconsultants comply with the same insurance requirements.

- a. Obligations – Compliance with the foregoing insurance requirements shall not relieve the CONSULTANT, its employees or agents of liability from any obligation under a Section or any other portions of this Agreement.

17. **MODIFICATIONS, AMENDMENTS OR ALTERATIONS** – No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

18. **INDEPENDENT CONSULTANT** – It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the CONSULTANT (including its officers, employees, and agents) the agent, representative, or employee of the CITY for any purpose, or in any manner, whatsoever. The CONSULTANT is to be and shall remain forever an independent CONSULTANT with respect to all services performed under this Agreement.

19. **EMPLOYEE STATUS** – Persons employed by the CONSULTANT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the CITY'S officers and employees either by operation of law or by the CITY.

20. **SERVICES NOT PROVIDED FOR** – The CITY shall honor no claim for services furnished by the CONSULTANT not specifically provided for herein.

21. **PUBLIC RECORDS LAW** – Notwithstanding any provision in this agreement to the contrary, the following public records requirements shall apply:

CONSULTANT, or provider of services hereunder, shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the CONSULTANT in conjunction with this Contract. Specifically, the CONSULTANT must:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the services being performed by the CONSULTANT.
- (2) 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.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (4) Meet all requirements for retaining public records and transfer at no cost to the City for all public records in possession of the CONSULTANT 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 City.

The CONSULTANT shall promptly provide the City with a copy of any request to inspect or copy public records in possession of the CONSULTANT and shall promptly provide the City a copy of the CONSULTANT's response to each such request. Failure to grant such public access will be grounds for immediate termination of this Contract by the City.

THIS ARTICLE WILL BE DEEMED TO APPLY TO ALL SERVICE CONTRACTS UNLESS THE CONSULTANT CAN DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT IT IS NOT ACTING ON BEHALF OF THE CITY UNDER FLORIDA LAW.

22. **COMPLIANCE WITH LAWS AND REGULATIONS** – In providing all services pursuant to this Agreement, the CONSULTANT shall exercise usual and customary professional care in its efforts to abide by all statutes, laws, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services, including those now in effect and hereafter adopted. Engineer shall secure all licenses or permits required by law or regulations, and shall comply with all ordinances, laws, orders, rules and regulations pertaining to its work hereunder. Any violation of said statutes, laws, ordinances, rules, or regulations shall entitle the CITY to terminate this Agreement immediately, for cause, upon written notice in the form prescribed in Section 25 to the CONSULTANT.
  
23. **NOTICE** – Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice to-wit:

**FOR CITY:**

Mike Null, Assistant City Manager  
City of Green Cove Springs  
321 Walnut Street  
Green Cove Springs, Florida 32043

**FOR CONSULTANT:**

(Name and Address of Consultant Signing Agreement)

24. **SUCCESSORS AND ASSIGNS** – The CITY and CONSULTANT each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement.
25. **THIRD PARTY BENEFICIARIES** – This Agreement does not create any relationship with, or any rights in favor of, any third party.
26. **NON-WAIVER** – The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right.
27. **GOVERNING LAW AND VENUE** – This Agreement is governed in accordance with the laws of the State of Florida. Venue shall be in Clay County.
28. **ATTACHMENTS** – All exhibits attached to this Agreement are incorporated into and made part of this Agreement by reference.
29. **AMENDMENTS** – The parties may amend this Agreement only by mutual written agreement of the parties with the same formality and of equal dignity herewith.
30. **CAPTIONS AND SECTION HEADINGS** – Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.
31. **CONSTRUCTION** – This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Agreement.
32. **COLLUSION** – By signing this Agreement, the CONSULTANT declares that this Agreement is made without any previous understanding, agreement, or connections with any persons, CONSULTANTS or corporations and that this Agreement is fair, and made in good faith without any outside control, collusion, or fraud.
33. **RIGHTS AT LAW RETAINED** – The rights and remedies of the CITY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.
34. **ENTIRE AGREEMENT** – This Agreement constitutes the entire Agreement and supersedes all prior written or oral agreements, understandings, or representations.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the date first written above by the CITY.

**CITY OF GREEN COVE SPRINGS**

**(NAME of FIRM)**

By: \_\_\_\_\_  
B Van Royal, Mayor

By: \_\_\_\_\_  
(Name of Signatory for Contractor)

By: \_\_\_\_\_  
Steve Kennedy, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Erin West, City Clerk

**APPROVED AS TO FORM AND CONTENT:**

By: \_\_\_\_\_  
L. J. Arnold, III, City Attorney

One (1) Exhibits:

- Exhibit "A" – Scope of Services RFQ No. LC 2021-04
- Exhibit "B" – Insurance
- Exhibit "C" – Example Work Order
- Exhibit "D" – Circular 2 Language

**EXHIBIT "A"**

## EXHIBIT "B"

### INSURANCE

#### A. General

Before starting and until acceptance of the work by the City, the CONSULTANT shall procure and maintain insurance of the types and to the limits specified in Section "B", paragraphs (1) to (4) inclusive below. All insurance policies herein required of the CONSULTANT shall be written by company duly authorized and licensed to do business in the State of Florida and be executed by same agents, thereof, duly licensed as agents in said State.

The CONSULTANT shall require each of his subconsultants to procure and maintain, until completion of that subconsultant's work, insurance of the types and to the limits specified in Section "B", paragraphs (1) to (4) inclusive below. It shall be the responsibility of the CONSULTANT to ensure that all his subconsultants meet these requirements.

#### B. Coverage

Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:

1. Workers' Compensation – Coverage to apply for all employees at the STATUTORY limits in accordance with Florida law.
2. Commercial General Liability – Coverage must be afforded that includes bodily injury, including death and property damage, in an amount *not less than* \$1,000,000 combined single limit per occurrence. This policy must also cover premises and/or operations, independent CONSULTANTS, products and/or completed operations.
3. Business Automobile Policy – Coverage must be afforded including coverage for all Owned vehicles and Hired/Non-Owned vehicles that includes bodily injury and property damage in an amount *not less than* \$1,000,000 per accident and in the aggregate.
4. Professional Liability – Coverage must be afforded, under an "occurrence" form policy or "claims made" form in an amount *not less than* \$1,000,000/Architects and Engineers E&O. It is required that Professional Liability Insurance coverage be provided for all acts and omissions that occur during the term of the Agreement. If this coverage is written as a "claims made" form, proof of extended reporting period coverage is required.

C. Certificates of Insurance

The CONSULTANT shall provide all Certificates of Insurance to the City with a thirty (30) day notice of cancellation, non-renewal, or reduction in coverage provision. Certificates of all insurance required from the CONSULTANT shall be filed with the City of Green Cove Springs before operations are commenced. The insurance indicated on the Certificate shall be subject to its approval for adequacy and protection. The Certificate will state the types of coverage provided, limits of liability and expiration dates. The required Certificates of Insurance may refer specifically to this Agreement and Section and the above paragraphs in accordance with which such insurance is being furnished and may state that such insurance is as required by such paragraphs of this Agreement.

The Certificate should also indicate if coverage is provided under a "claims made" or "per occurrence" form. If any coverage is provided under claims made form, the Certificate will show a retroactive date, which should be the same date of the Agreement (original if Agreement is renewed) or prior.

If the initial insurance expires prior to the completion of the work, renewal Certificates shall be furnished thirty (30) days prior to the date of their expiration.

**EXHIBIT "C"**

SAMPLE WORK ORDER

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT**

**WORK ORDER NO.:** \_\_\_\_\_  
(For tracking purposes only, to be assigned by the CONSULTANT after execution).

**PURCHASE ORDER NO.:** \_\_\_\_\_  
(For billing purposes only, to be assigned by the CITY after execution.)

**PROJECT NAME:** \_\_\_\_\_

**CITY:** CITY OF GREEN COVE SPRINGS, a political subdivision of the State of Florida

**PROJECT MANAGER:** \_\_\_\_\_

**CONSULTANT:** \_\_\_\_\_

**CONSULTANT'S ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

Execution of the Work Order by the CITY shall serve as authorization for the CONSULTANT to provide for the above project, professional services as set out in the Scope of Services attached as Exhibit "A", to that certain Agreement dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the CITY and the CONSULTANT and further delineated in the specifications, conditions and requirements stated in the following listed documents which are attached hereto and made a part hereof.

**ATTACHMENTS (Check all that apply):**

- DRAWINGS/PLANS/SPECIFICATIONS
- DETAILED SERVICES AND TASKS FOR PROJECT OR STUDY
- SPECIAL CONDITIONS
- \_\_\_\_\_

The CONSULTANT shall provide said services pursuant to this Work Order, its attachments and the above-referenced Agreement, which is incorporated herein by reference as if it had been set out in its entirety. Whenever the Work Order conflicts with said Agreement, the Agreement shall prevail.

**TIME FOR COMPLETION:** The work authorized by this Work Order shall be commenced upon receipt of a Purchase Order by the CONSULTANT and shall be completed within (\_\_\_\_\_) calendar days from receipt of a Purchase Order by the CONSULTANT.



**METHOD OF COMPENSATION:**

- (a) This Work Order is issued on a:
  - "Lump Sum Basis"
  - "Hourly Rate Basis" with a "Not-to-Exceed" amount
  - "Hourly Rate Basis" with a "Limitation of Funds" amount
  
- (b) If the compensation is based on a "Lump Sum Basis," then the CONSULTANT shall perform all work required by this Work Order for the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_). In no event shall the CONSULTANT be paid more than the "Lump Sum Fee" Amount.
  
- (c) If the compensation is based on an "Hourly Rate Basis" with a "Not-to-Exceed" Amount, then the CONSULTANT shall perform all work required by this Work Order for a sum not exceeding \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_). The CONSULTANT'S compensation shall be based on the actual work required by this Work Order.
  
- (d) If the compensation is based on an "Hourly Rate Basis" with a "Limitation of Funds" Amount, then the CONSULTANT is not authorized to exceed the "Limitation of Funds" amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_ ) without prior written approval of the CITY. Such approval, if given by the CITY, shall indicate a new "Limitation of Funds" amount. The CONSULTANT shall advise the CITY whenever the CONSULTANT has incurred expenses on this Work Order that equals or exceeds eighty percent (80%) of the "Limitation of Funds" amount. The CITY shall compensate the CONSULTANT for the actual work performed under this Work Order.

The CITY shall make payment to the CONSULTANT in strict accordance with the payment terms of the above-referenced Agreement.

It is expressly understood by the CONSULTANT that this Work Order, until executed by the CITY, does not authorize the performance of any services by the CONSULTANT and that the CITY, prior to its execution of the Work Order, reserves the right to authorize a party other than the CONSULTANT to perform the services called for under this Work Order if it is determined that to do so is in the best interest of the CITY.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, for the purposes stated herein.

**(FIRM's NAME)**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
(Signatory for Firm)

**CITY OF GREEN COVE SPRINGS**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Mike Null, Assistant City Manager

Date: \_\_\_\_\_