

**AGREEMENT FOR
PROFESSIONAL CONSTRUCTION SERVICES
Bid # 2024-02 – Julia Street Stormwater Improvements**

This Agreement is entered into as of this 16th day of April, 2024, by and between the City of Green Cove Springs, Florida, a municipal corporation under the laws of the State of Florida whose address is: 321 Walnut Street, Green Cove Springs, Florida, 32043, hereinafter referred to as “CITY” and Kirby Development, Inc., whose address is: 108 Lee Road , Jacksonville, FL 3225, hereinafter referred to as “CONTRACTOR.”

WITNESSETH

WHEREAS, the CITY is in need of qualified and licensed Construction services for the Julia Street Stormwater Improvement Project; and

WHEREAS, the CITY solicited a proposal for services; and

WHEREAS, the CONTRACTOR submitted a proposal to provide said services and has represented to the CITY that it is qualified and desires to perform said services in accordance with the terms and conditions contained herein, and all applicable laws and professional standards.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1.0 TERM

- 1.1 This Agreement is to become effective upon execution by both parties and shall remain in effect until completion of the work outlined in Bid # 2024-02 – Julia Street Stormwater Improvement Project.

2.0 DESCRIPTION OF SERVICES

- 2.1 It is expressly understood and acknowledged that the CONTRACTOR shall provide those services as more particularly described in Exhibit “A” (Proposal Form) including, but not necessarily limited to the stormwater pipe/inlets, sidewalks, curbs, and asphalt.
- 2.2 The CONTRACTOR shall not be authorized to proceed until the CITY has issued a Notice to Proceed to the CONTRACTOR. Upon receipt of the signed Notice to Proceed from the CITY, the CONTRACTOR shall perform the services set forth herein.

- 2.3 The CONTRACTOR shall provide the CITY'S designated Project Manager with statements for services rendered during the preceding month. Each time sheet shall state the names and classifications of all personnel who performed services during said month.

3.0 SCHEDULE

- 3.1 The CONTRACTOR shall perform services in conformance with the mutually agreed upon schedule consistent with the completion of the project and the fee proposal attached herein as Exhibit "A". More specifically, the construction shall be completed within 300 days from issuance of Notice to Proceed per the bid documents. The CONTRACTOR shall complete all services in a timely manner and will keep the CITY fully informed of the status of the work on a reasonable basis in relation to the scope of the project or at least monthly. Should the CONTRACTOR fall behind the agreed upon schedule it shall employ such resources so as to comply with the agreed upon schedule at no additional cost to the CITY.
- 3.2 No extension for completion of services shall be granted to the CONTRACTOR without the CITY'S prior written consent.

4.0 METHOD OF PAYMENT FOR SERVICES AND EXPENSES

- 4.1 The CITY shall allow the CONTRACTOR one payment draw per month, less 5% retainage, payment shall be based upon the agreed upon fees found in Exhibit "A". The fee schedules shall include wages, salaries, taxes, insurance, overhead, and profit. The CITY shall pay the CONTRACTOR in the amount of \$1,239,910.03. This is a line item, quantified bid. Any adjustments to the Fee Schedule must be mutually agreed to by the CITY and the CONTRACTOR in advance and in writing and must be based upon items that are beyond the Project Scope of Services in Exhibits "A".
- 4.2 TIME FOR PAYMENT: Once a month the CONTRACTOR may submit an invoice for payment. As a condition for receiving payment, the CONTRACTOR shall be on schedule and in good standing with the CITY, they shall not be in default of any of the terms and conditions of this Agreement. The CONTRACTOR shall provide to the CITY an invoice, along with all partial/final release of liens from subcontractors and suppliers. The invoice shall be forwarded to the CITY'S Representative for Review and approval, the Representative will then forward it to Finance for payment. All Requests for Payment shall be signed by an authorized representative of the CONTRACTOR, no manually corrected invoices shall be accepted, for payment, any corrected invoices shall be returned to the CONTRACTOR for their review and the corrected invoice re-submitted for payment. The monthly invoice shall include a statement identifying the time frame which it corresponds to, it shall be for a single lump sum billed amount for services performed as set forth in Exhibit "A", less the 5% retainage. The CITY shall pay all valid,

approved, and undisputed invoices within thirty (30) days of receipt from the CONTRACTOR. In the event that the CITY disputes any invoice submitted, it shall advise the CONTRACTOR, in writing, and said invoice shall not be deemed due and payable under this Agreement. Neither the CITY'S review, approval, or acceptance of, nor payment for, any services provided hereunder shall be construed to operate as a waiver of any rights under this Agreement and the CONTRACTOR shall be liable to the CITY for any and all damages to the CITY caused by the CONTRACTOR'S negligence or wrongful performance of any of the services furnished under this Agreement.

- 4.3 In the event of termination by the CITY under Section 16.0 during the performance of the services, payments due the CONTRACTOR up to the point of termination, including payments for services rendered, and all costs incurred shall constitute total payment for such services.

5.0 RIGHT TO INSPECTION

- 5.1 The CITY or its agents shall at all times have the right to review or observe the services performed by the CONTRACTOR. No inspection, review, or observation shall relieve the CONTRACTOR of its responsibility under this Agreement.

6.0 PROGRESS MEETING

- 6.1 The CITY'S designated Project Manager may hold periodic meetings on a monthly basis, or more frequently, if required, during the term of this Agreement. The CONTRACTOR'S Project Manager and all other appropriate personnel shall attend such meetings as designated by the CITY'S Project Manager.

7.0 SAFETY

- 7.1 The CONTRACTOR agrees to comply with the CITY'S published safety standards while on the property of the CITY.
- 7.2 The CONTRACTOR shall have full responsibility and assume all liability for the safety and supervision of its employees while performing services provided hereunder.

8.0 REASONABLE ACCESS

- 8.1 During the term of this Agreement, the CITY shall grant the CONTRACTOR reasonable access to the CITY'S premises for purposes of fulfilling its obligations under this Agreement.

9.0 INSURANCE/BONDS AND HOLD HARMLESS / INDEMNIFICATION

- 9.1 The CONTRACTOR shall maintain in force during the term of this Agreement, at its own expense, insurance set forth in Exhibit "A", attached hereto and incorporated herein, and shall be bound by the terms of the Hold Harmless / Indemnification provisions expressed therein.
- 9.2 The CONSTRUCTION MANAGER shall maintain payment and performance bonds in an amount equal to the contract amount for the duration of the term of this agreement.

10.0 COMPLIANCE WITH LAWS AND REGULATIONS

- 10.1 The CONTRACTOR shall comply with all requirements of Federal, State, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of this Agreement.

11.0 REPRESENTATIONS

- 11.1 The CONTRACTOR represents that the services provided hereunder shall conform to all requirements of this Agreement, response thereto and any amendments or supplements thereto; shall be consistent with recognized and sound professional construction management practices and procedures; and shall conform to the customary standards of care, skill, and diligence appropriate to the nature of the services rendered.
- 11.2 The recommendations, advice, budgetary information and schedules to be furnished by CONTRACTOR under this Agreement shall not be deemed to be representations, warranties, or guarantees or constitute the performance of licensed professional services. Further CONTRACTOR shall not be required to provide professional services that constitute the practice of architecture or engineering. CONTRACTOR shall cause any such services to be provided by a properly licensed design professional. Any claim by Owner for damage, loss, or expense, based directly or indirectly upon acts, errors, or omissions of any architect, engineer, or other design professional who CONTRACTOR is required to engage in connection with this Agreement shall be made by Owner against said design professional and its insurer(s) only, and CONTRACTOR shall have no liability of any kind, direct or indirect, for the professional negligence of said design professional under this Agreement or otherwise.

In no event shall CONTRACTOR's liability arising out of or in connection with the performance or nonperformance of any or all Services or other obligations under this Agreement exceed the value of the contract or not otherwise addressed in CONTRACTOR's insurance coverage in which case the higher coverage amount shall apply, whether based on delay, contract, tort, negligence, strict liability, warranty,

indemnity, error and omissions or otherwise, provided that such limitation of liability shall not apply to CONTRACTOR's indemnity obligations for claims asserted against the Owner by third parties for personal injury or tangible property damage caused by the negligence of the CONTRACTOR or its employees, and provided further that such limitation shall not apply to amounts actually paid from the professional liability insurance CONTRACTOR is required to maintain pursuant to the terms of this Agreement.

- 11.3 The CONTRACTOR represents that the personnel furnishing such services shall be qualified and competent to perform the services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best professional knowledge and judgment.
- 11.4 Subject to the provisions of this Section, should the CONTRACTOR breach the warranties set forth herein, the CITY shall have such remedies as may be provided at law or equity.

12.0 DOCUMENTS

- 12.1 Upon the CITY'S or its designated Project Manager's request, at any time during the term of this Agreement, or upon completion or termination of this Agreement, the CONTRACTOR shall provide the CITY, or its designated Project Manager, with a copy of all documents, plans, drawings and electronic files prepared by the CONTRACTOR under this Agreement.

13.0 ASSIGNMENT

- 13.1 The CONTRACTOR shall not assign or subcontract this Agreement or any rights or monies due or to become due hereunder without the prior written consent of the CITY.
- 13.2 If, upon receiving written approval from the CITY, any part of this Agreement is subcontracted by the CONTRACTOR, the CONTRACTOR shall be fully responsible to the CITY for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.
- 13.3 If the CITY determines that any subcontractor is not performing in accordance with this Agreement, the CITY shall so notify the CONTRACTOR who shall take immediate steps to remedy the situation.
- 13.4 If any part of this Agreement is subcontracted by the CONTRACTOR prior to commencement of any work by the subcontractor, the CONTRACTOR shall require the subcontractor to provide the CITY and its affiliates with insurance coverage as required by the CITY.

14.0 INDEPENDENT CONTRACTOR

- 14.1 At all times during the term of this Agreement, the CONTRACTOR shall be considered an Independent Contractor.

15.0 DEFAULT

- 15.1 If, during the term of this Agreement, the CONTRACTOR shall be found in default of any of the material provisions of this Agreement, the CITY may suspend its performance hereunder until such delinquency or default has been corrected; the CITY shall notify the CONTRACTOR in writing and of the deficiency and allow them ten (10) days to correct the default before suspending them. If the CONTRACTOR fails to correct such delinquency within the allotted time period, the CITY may terminate this Agreement.

16.0 TERMINATION

- 16.1 Notwithstanding any other provision of this Agreement, the CITY may, upon written notice to the CONTRACTOR, terminate this Agreement if: a) without cause and for convenience upon thirty (30) days written notice to the CONTRACTOR; b) the CONTRACTOR is adjudged to be bankrupt; c) the CONTRACTOR makes a general assignment for the benefit of its creditors; or d) the CONTRACTOR fails to comply with any of the conditions or provisions of this Agreement, without prejudice to any other right or remedy the CITY may have under this Agreement. In the event of such termination, the CITY shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for work, properly performed and accepted prior to the effective date of termination.
- 16.2 The CONTRACTOR may stop work or terminate if through no act or fault of CONTRACTOR, the Work is suspended for a period of more than 60 days by owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment within 30 days after it is submitted or Owner fails to pay CONTRACTOR in accordance with Florida's Prompt Payment Act any sum finally determined to be due, then CONTRACTOR may, upon 10 days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment invoiced for services rendered to date. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon 10 days' written notice to Owner stop the Work until payment is made of all such amounts due CONTRACTOR.

17.0 FORCE MAJEURE

17.1 Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if, and to the extent, caused by acts of God, fire, flood, windstorm, explosion, riot, war, sabotage, strikes, extraordinary breakdown of or damage to the CITY'S affiliates' generating plants, their equipment or facilities; court injunction or order; Federal and/or State law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstances of Force Majeure remain in effect for sixty (60) days, either party may terminate this Agreement.

18.0 PUBLIC RECORDS REQUIREMENTS

18.1 Notwithstanding any provision in this agreement to the contrary, the following public records requirements shall apply:

1. Keep and maintain public records required by the public agency (City/Organization) to perform the service.
2. Upon request from the public agency's custodian of public records (City Clerk), provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. 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 for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

If the Contractor has questions regarding the application of Chapter 119 Florida Statutes, for their duties to provide public records relating to this contract then contact the City's custodian of Public Records City Clerk Erin West at (904) 297-7500 X 3307, or e-mail ewest@greencovesprings.com, 321 Walnut St. Green Cove Spring FL 32043.

19.0 GOVERNING LAW & VENUE

19.1 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue shall be Clay County, Florida, or the United States District Court in and for the Middle District of Florida. Each party waives their rights to a jury trial of any issues arising hereunder and agreement to submit to binding arbitration.

20.0 HEADINGS

20.1 Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

21.0 SEVERABILITY

21.1 In the event any portion of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.

22.0 WAIVER AND ELECTION OF REMEDIES

22.1 Waiver by either party of any terms, conditions, or provisions of this Agreement shall not be considered a waiver of that term, condition, or provision in the future.

22.2 No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

23.0 THIRD PARTY RIGHTS

23.1 Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the CITY and the CONTRACTOR.

24.0 PROHIBITION AGAINST CONTINGENT FEES

24.1 The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, 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 bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

25.0 ENTIRE AGREEMENT

25.1 Except as otherwise stated, this Agreement, including the schedules, attachments, appendixes, and exhibits attached hereto, constitutes the entire Agreement between the CITY and the CONTRACTOR with respect to the service specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

26.0 SOVEREIGN IMMUNITY

26.1 Nothing contained in the Agreement shall be construed as a waiver of the CITY'S rights to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the CITY'S potential liability under Federal or State law.

27.0 NOTICE

27.1 Any notices required to be given by the terms of this Agreement shall be delivered by hand or mailed, postage pre-paid, to:

CITY: City of Green Cove Springs
321 Walnut Street
Green Cove Springs, FL 32043

CONTRACTOR: Kirby Development, Inc.
108 Lee Road
Jacksonville, FL 32225

Either party may change the name of the person receiving notices and the address at which notices are received by so advising the other party in writing.

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

City of Green Cove Springs

Constance Butler, Mayor

Date

Steve Kennedy, City Manager

Date

ATTEST:

Erin West, City Clerk

Date

AS TO FORM ONLY:

L. J. Arnold, III, City Attorney

Date

Kirby Development, Inc.

Brian Kluge, President

Date