

**CONTINUING CONTRACT FOR PROFESSIONAL
ENGINEERING SERVICES**

This Continuing Contract for Professional Engineering Services is made and entered into by the **Town of Juno Beach**, a Florida municipal corporation (“Town”) and **Simmons & White, Inc.**, a Florida corporation (“Engineer”), in response to the Town’s Request for Qualifications for such services.

WHEREAS, in accordance with Section 287.055, Florida Statutes (“Consultants’ Competitive Negotiation Act” or “CCNA”), the Town issued a Request for Qualifications for Professional Engineering Services and solicited statements from qualified professional engineering firms for a continuing contract to provide municipal engineering services on an as needed basis; and

WHEREAS, the Town has selected Engineer to provide such professional engineering services and desires to enter a non-exclusive “continuing contract” within the purview of the CCNA; and

WHEREAS, Engineer has considerable expertise and experience in this area and wishes to provide professional engineering services to the Town in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual representations and obligations herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Recitals:

The foregoing recitals are ratified as true and incorporated herein.

Section 2. Representations by Engineer:

By executing this Contract, Engineer makes the followed express representations to the Town:

- A. Engineer is professionally qualified to provide the professional services outlined in the Request for Qualifications issued by the Town.
- B. Engineer shall maintain all necessary licenses, permits or other authorizations necessary to provide such services.
- C. Professional services performed by Engineer pursuant to this Contract shall comply with all applicable laws, codes and regulations and shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing within the same locality.

Section 3. Scope of Services:

- A. This Agreement shall authorize Engineer to perform general professional engineering services to the Town on an as needed basis in a manner satisfactory to the Town Council and Town Manager.
- B. The general professional engineering services performed by Engineer may include, but not be limited to, the following:
 - (1) Civil, structural, geotechnical, and electrical engineering work;
 - (2) Architectural services, including landscape architecture;
 - (3) Transportation planning and analysis;
 - (4) Permitting;
 - (5) Land use planning, surveying, and geological services;
 - (6) Reviewing land development application and associated documents, including site plans and subdivision plats;
 - (7) Feasibility analysis and cost estimation;
 - (8) Contract and construction management;
 - (9) Stormwater infrastructure, including NPDES permitting;
 - (10) Testing and inspections; and
 - (11) Advising elected official and Town Staff on issues requiring professional engineering and evaluations and matters as may materially affect the Town's physical infrastructure and public assets, including attendance at public meeting.
- C. General engineering services shall be billed on an hourly basis as set forth in Section 7 below. At the option of the Town, authorizations for specific projects or additional services shall be in the form of a Work Authorization. Each Work Authorization shall be approved by the Town Manager and shall set forth the specific scope of services, the maximum amount of compensation, and a completion date.
- D. During the term of this Contract, the professional services provided by Engineer to the Town shall not include projects for which construction costs exceed seven and one-half million dollars (\$7,500,000), as adjusted pursuant to Section 287.055(2)(g)1, Florida Statutes, or any individual study activity

when the fee for such services exceeds five hundred thousand dollars (\$500,000).

- E. This Contract is non-exclusive, and the Town specifically reserves the right to seek the services of other engineers or consultants for any matter, notwithstanding the fact that the project or task may fall within the scope of services of this Contract.

Section 4. Insurance:

- A. During the performance of professional services under this Contract, Engineer shall secure and maintain, at its own expense, the following insurance policies:
 - (1) Professional liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence or claim.
 - (2) Workers' compensation and employer's liability insurance for all employees engaged in work pursuant to this Contract in accordance with Florida law.
 - (3) Comprehensive general liability insurance with bodily injury limits of not less than two million dollars (\$2,000,000), combined single limit, per occurrence and with property damage limits of not less than two million dollars (\$2,000,000) combined single limit, per occurrence.
 - (4). Comprehensive automobile liability insurance for all owned, non-owned and hired automobiles and other vehicles used by Engineer with a one million dollar (\$1,000,000) combined single limit for bodily injury and property damage liability per occurrence.
- B. All liability insurance, except professional liability insurance, shall specifically provide that the Town is an additional named insured with respect to the required coverages and the operations of Engineer pursuant to this Contract.
- C. All of the policies of insurance required to be purchased and maintained shall contain a provision or endorsement that coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days after written notice has been given to the Town by certified mail.
- D. All of Engineer's subcontractors and consultants shall be required to include the Town and Engineer as additional insureds on their general liability insurance policies.

- E. Engineer shall not commence work under this Contract until all insurance coverage required by this section has been obtained and certificates evidencing same are filed with the Town.

Section 5. Personnel:

- A. Engineer shall assign only qualified personnel to perform any of the requested professional services.
- B. At the time of execution of this Contract, the parties anticipate that the following named individual(s) will oversee the services provided by Engineer to the Town:

Phillip "Tad" Rowe, P.E.
Bryan G. Kelley, P.E.

- C. Should Engineer reassign this function to new or additional individuals, Engineer shall provide the Town with written notice of any such reassignment within ten (10) calendar days.

Section 6. Duties and Obligations of the Town:

The Town shall afford Engineer access to any project site as may be reasonably necessary for Engineer to properly perform its services under this Contract and shall provide Engineer with sufficient guidance and input to perform all services contemplated by this Contract in a timely manner.

Section 7. Payments:

- A. Town shall pay Engineer for services performed pursuant to this Contract in accordance with the Fee Schedule attached hereto as Exhibit "A" and incorporated herein by reference or as otherwise agreed to between the Town and Engineer. Engineer shall not bill the Town for calls or communications of a routine basis that relate solely to the status of pending projects or matters.
- B. As a condition precedent for any payment due under this paragraph, Engineer shall submit monthly, unless otherwise agreed to in writing by the Town, an invoice to the Town requesting payment for services rendered and expenses incurred.
 - (1) Each invoice shall bear the signature of Engineer, which signature shall constitute Engineer's representation to the Town that the services indicated in the invoice have been properly and timely performed, that the expenses included in the invoice have been reasonably incurred, and that all obligations of Engineer covered by prior invoices have been paid in full (unless expressly indicated otherwise).

- (2) Engineer shall submit detailed time sheets for projects billed on a time and material basis and a written summary of completion for projects billed on a lump sum basis.
- C. All submittals for payment of per diem and travel expenses by Engineer shall comply with the provisions of Section 112.061, Florida Statutes, and all applicable Town policies. The Town shall not pay, nor shall Engineer incur, any per diem or travel expenses without the Town's prior written approval.

Section 8. Indemnification:

- A. Engineer shall indemnify and hold harmless the Town and its officers, agents, and employees, from all liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees (at the trial and appellate levels) to the extent caused by the negligence, recklessness or intentional conduct of Engineer, its consultants, subcontractors, or other persons employed or utilized by Engineer in the performance of services pursuant to this Contract.
- B. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Engineer, nor shall this Contract be construed as a waiver of sovereign immunity beyond the limited waiver provided in section 768.28, Florida Statutes.
- C. **PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, EMPLOYEES OF ENGINEER MAY NOT BE HELD INDIVIDUALLY LIABLE FOR ECONOMIC DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.**

Section 9. Independent Contractor:

Engineer is, and shall be, in the performance of services pursuant to this Contract, an independent contractor and not an employee, agent, or servant of the Town. All persons engaged in any services performed pursuant to this Contract shall at all times, and in all places, be subject to Engineer's sole discretion, supervision and control, and Engineer shall exercise sole control over the means and manner in which its employees, consultants and subcontractors perform such services.

Section 10. Project Records:

- A. All records reasonably related to the performance of professional services by Engineer or Engineer's consultants or subcontractors, which are not in

possession of the Town, shall be made available to the Town or any state, federal or other regulatory authority for inspection and copying upon written request of the Town. Such records include, but are not limited to, all plans, specifications, submittals, correspondences, minutes, memoranda, sound recordings, video recording and computer files. These records include those documents reflecting the time expended and expenses incurred by the personnel of Engineer and its consultants or subcontractors in performing its obligations pursuant to this Contract.

- B. Engineer shall maintain and protect such records for no less than seven (7) years after final completion of any project, or for any longer period of time as may be required by applicable or sound engineering practice.

Section 11. Ownership of Instruments:

- A. All instruments of professional services including, but not limited to, documents, records, disks, original drawings, plans and specifications and other information created or procured by Engineer for services performed pursuant to this Contract shall become the property of the Town upon completion of the work or project for which the instrument was utilized and upon payment by the Town.
- B. Engineer may maintain copies of all such instruments for its records, provided, however, that any material, products or patent paid for by the Town pursuant to this Contract shall be the property of the Town and shall not be used by Engineer for profit without the prior written consent of the Town.
- C. The Town acknowledges that any re-use of instruments of professional services by the Town, other than for the intended purpose without written verification and adaptation by Engineer for such specific purpose, shall be at the sole risk of the Town without recourse to Engineer.

Section 12. Term of Contract:

The term of this Contract shall be for five (5) years from the Effective Date.

Section 13. Termination of Contract:

- A. *Engineer's Termination for Default.* Engineer may, on thirty (30) days' written notice to the Town, terminate this Contract in the event the Town fails to substantially perform its obligations hereunder and fails to cure such default, if curable, within fifteen (15) days after receiving written notice of such default. Upon such termination, the Town shall pay Engineer for all services performed up to and including the date of termination. Engineer shall not, however, be entitled to any damages from such termination including, but not limited to, loss of anticipated profits.

- B. *Town's Termination for Default:* The Town may, on thirty (30) days' written notice to Engineer, terminate this Contract without prejudice to any other remedy it may have, when Engineer fails to substantially perform its obligations hereunder and failures to cure such default, if curable, within fifteen (15) days after receiving written notice of such default. Upon such termination, the Town may take possession of all materials, products, documents and records necessary to complete pending projects in whatever way it deems expedient. If the expense of completing the project exceeds any unpaid balance due under this Contract to Engineer at the time of termination, Engineer shall be responsible to the Town for the difference.
- C. *Town's Termination without Default:* The Town may, on thirty (30) days' written notice to Engineer, without cause and without prejudice to any other right or remedy, elect to terminate this Contract. Upon such termination, the Town shall pay Engineer for all work executed and expenses incurred in accordance with the terms of this Contract up through the date of termination.

Section 14. Successors and Assigns:

The Town and Engineer each bind itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Neither the Town nor Engineer shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other.

Section 15. Governing Law, Venue and Remedies:

- A. This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Contract will be held in Palm Beach County.
- B. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- C. **The parties knowingly, voluntarily, and intentionally waiver any right they may have to trial by jury** with respect to any litigation arising out of this Contract.

Section 16. Access and Audits:

Engineer shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing services pursuant to this Contract for at least three (3) years after termination of this Contract. The Town shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at Engineer's place of business. In no circumstances will Engineer be required to disclose any confidential or proprietary information regarding its products and service costs.

Section 17. Federal and State Taxes:

The Town is exempt from federal tax and state sales tax and use taxes. Upon request, the Town shall provide an exemption certificate to Engineer. Engineer is not exempt from paying sales tax to its suppliers for materials used to fulfill its obligations under this Contract, nor shall Engineer be authorized to use the Town's tax exemption number in securing such materials.

Section 18. Enforcement Costs:

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court awarded costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

19. Severability:

If any term or provision of this Contract, or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions, to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

Section 20. Notice:

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the Town shall be mailed to:

Town of Juno Beach
Attn: Town Manager
340 Ocean Drive
Juno Beach, FL 33408

and if sent to the Engineer shall be mailed to:

Simmons & White, Inc.
Attn: Bryan Kelley, P.E., Principal
2581 Metrocentre Boulevard West, Suite 3
West Palm Beach, FL 33407

The foregoing names and addresses may be changed if such change is provided in writing to the other party.

Section 21. Entirety of Contract:

The Town and Engineer agree that this Contract sets forth the entire Contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Section 22. Terminology and Captions:

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

Section 23. Waiver:

Failure of a party to enforce or exercise any of its right(s) under this Contract shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

Section 24. Preparation:

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

Section 25. Exhibits and Contract Documents:

Each exhibit and each document referenced in this Contract form an essential part of this Contract. These exhibits and documents, even if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

Section 26. Survivability:

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

Section 27. Representations and Binding Authority:

The persons executing this Contract represent that they have the full power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract.

Section 28. Inspector General.

Engineer is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract, and in furtherance thereof, may demand and obtain records and testimony from Engineer and its subcontractors. Engineer understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Engineer or its subcontractors to fully cooperate with the Inspector General when requested may be deemed by the Town to be a material breach of the Contract justifying termination.

Section 29. Public Records.

IF ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF RECORDS, TOWN CLERK CAITLIN COPELAND AT (561) 656-0316 OR CCOPELAND@JUNO-BEACH.FL.US, 340 OCEAN DRIVE, JUNO BEACH, FL 33408

ENGINEER shall comply with the provisions of Section 119.0701, Florida Statutes, and specifically agrees to:

- A. Keep and maintain public records required by the TOWN to perform the service.
- B. Upon request from the TOWN's custodian of public records, provide the TOWN 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 this chapter or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following

completion of the contract if ENGINEER does not transfer the records to the public agency.

- D. Upon completion of the contract, transfer, at no cost, to the TOWN all public records in possession of ENGINEER or keep and maintain public records required by the TOWN to perform the service. If ENGINEER transfers all public records to the TOWN upon completion of the contract, ENGINEER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ENGINEER keeps and maintains public records upon completion of the contract, ENGINEER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records, in a format that is compatible with the information technology systems of the TOWN.

Section 30. E-Verify:

ENGINEER warrants and represents that ENGINEER and all subcontractors are in compliance with Section 448.095, Florida Statutes, as may be amended. ENGINEER has registered to use, and shall continue to use, the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of newly hired employees and has received an affidavit from each subcontractor stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. If the TOWN has a good faith belief that ENGINEER has knowingly violated Section 448.09(1), Florida Statutes, the TOWN shall terminate this Contract pursuant to Section 448.095(2), Florida Statutes, as may be amended. If the TOWN has a good faith believe that a subcontractor has knowingly violated Section 448.09(1), Florida Statutes, but ENGINEER has otherwise complied, it shall notify ENGINEER, and ENGINEER shall immediately terminate its contract with the subcontractor.

Section 31. Effective Date:

The Effective Date of this Contract shall be the date on which it is executed by the last party to execute same.

IN WITNESS WHEREOF, the TOWN and ENGINEER hereto have made and executed this Contract as of the day and year first above written.

TOWN OF JUNO BEACH

ENGINEER:

BY: _____
TOWN MANAGER

BY: _____
Name:
Title:

ATTEST:

BY: _____
TOWN CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
TOWN ATTORNEY