

NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement" or "Contract") is made and entered into this _____ day of _____, 20___, by and between City of Fellsmere, Florida, hereinafter referred to as the "City", and _____, a professional _____ services _____ firm, whose _____ address _____ is _____, hereinafter referred to as "Professional."

PREMISES

WHEREAS, the City desires to have a Professional as defined in Section 287.055 Florida Statutes, as amended, in a non-exclusive master agreement to assist the City administration, planning, community development, public works, and utilities departments with projects regarding, but not limited to: the City's storm water; site development; roadways; comprehensive planning; expert testimony; development review; standards; water resources; water system regulation; water systems; wastewater and reclaimed water reuse systems; environmental permitting; hydrogeology and hydrology; civil engineering; master planning; emergency & hurricane preparation / recovery services; rate studies; project design; permitting; construction phase services; architectural services; surveying services; landscape architecture; assistance in the development of ordinances, resolutions, agreements and other documents associated with the above; management consulting and/or engineering projects; or other activities pertaining to the City and other services in connection with an assigned project as required and as set forth in a Scope of Services; and

WHEREAS, the City desires to employ the Professional in connection with various Work Orders upon the terms and conditions hereinafter set forth, and Exhibit "A" General Provisions attached hereto, and the Professional is desirous of obtaining such employment and has represented that it is qualified and competent to perform such services upon said terms and conditions; and

WHEREAS, the City selected Professional in accordance with the Consultant Competitive Negotiations Act (CCNA), as amended.

NOW, THEREFORE, in consideration of the mutual covenants and agreement hereinafter contained, it is agreed by and between the parties hereto as follows:

1. SCOPE OF PROFESSIONAL SERVICES:

A. The Professional shall diligently and timely perform professional services as requested by the City. The Professional shall provide the City with a Scope of Services, schedule and cost for the professional services requested by the City for approval prior to commencing work. The Professional agrees to perform all necessary professional services as stated above. The Professional will endeavor not to duplicate

any previous work done on any project. Before issuance of a Work Order and written authorization to proceed from the City, the Professional shall consult with the City to clarify and define the City's requirements for the project and review all available data.

- 1) The Professional shall attend meetings with the City and its representatives, upon request.
- 2) In order to accomplish the work described under this Agreement under the time frames and conditions set forth in this Agreement, the Professional shall observe the following requirements:
 - a. The Professional will complete his/her work on the project within the time allowed in the schedule for each Work Order by maintaining an adequate staff of registered Professionals, certified operators, draftsmen, and other employees on the work at all times.
 - b. The Professional shall comply with all federal, state, and local laws applicable to the project. The Professional's work product shall conform with all applicable federal, state and local laws applicable to the project.
 - c. The Professional shall cooperate fully with the City in order that all phases of the work may be properly scheduled and coordinated.
 - d. The Professional shall report the status of this project to the City's Representative upon request and hold all drawings, calculations and related work open to the inspection of the City's Representative or his authorized agent at any time, upon reasonable request.
- 3) The Professional shall furnish additional copies of reports, drawings, specifications, bidding and construction contract documents, and other pertinent items as required by prospective bidders, materials suppliers, and other interested parties, but may charge only for the actual cost of providing such copies. The cost of these sets of documents are not included in the basic compensation paid to the Professional but will be paid as a direct expense.
- 4) All original documents, survey notes, computer programs, electronic files, field books, tracings, and the like including all items furnished to the Professional by the City pursuant to this Agreement, are and shall remain the property of the City, and shall be delivered to the City upon completion of the work. All items prepared by the Professional shall be created, maintained, updated, and provided in the format as specified by the City.
- 5) Compensation to the Professional for basic services shall be in accordance with each Work Order, as mutually agreed upon by the Professional and the City.

B. The Professional shall define the time for completion of each project in the Work Order.

2. PAYMENT:

A. The City agrees to pay the Professional for the services described in the various Work Orders, and the Professional agrees to accept as payment a fee as described in each Work Order. Authorization for each task and the notice to proceed must be provided by the City prior to the Professional performing the work. The specific Work Order serves as a Notice to Proceed. An example of a blank Work Order form is shown as Exhibit "B" attached hereto.

B. The Professional will be reimbursed for reasonable out-of-pocket expenses upon submission of adequate documentation.

C. If upon written instruction by the City, the Professional shall perform additional work, then in such event, the Professional shall be entitled to additional compensation. The additional compensation shall be computed by the Professional on a revised fee quotation proposal and submitted to the City for written approval. The fee shall be agreed upon before commencement of the above additional work and shall be incorporated by written amendment to this Contract as an amended Work Order. The additional work shall be performed in accordance with the Fee Schedule set forth in Exhibit "C" or an amended fixed fee as set forth in an amended Work Order. If such additional work is required as a result of error, omission, or negligence by the Professional, the Professional shall not be entitled to additional compensation.

D. In the event that additional outside services are required, the City in its sole discretion shall decide whether the City or Professional will hire the outside services provider. Should the City decide that the professional will hire the outside services provider then the Professional shall:

1) Obtain a written proposal from the firm designated to render the required services and submit such proposal to the City for written approval.

2) If the services are such that licensing is required to perform them, the Professional shall select a firm that is licensed in the State of Florida.

3) If the proposal is approved in writing by the City, the Professional shall enter into a contract with the firm for the furnishing of such services in accordance with the proposal. Such contract shall contain the provisions set forth in Sections 10, 11, 14, 19, 21, 22, 23, 24, 26, 32, 34, 37 38, 39, 42, and 43 of this Agreement.

4) The Professional shall submit a minimum of two (2) copies of the contracts for all such required services to the City, unless otherwise directed by the City.

5) Upon approval by the City of such contracts, the City shall reimburse the Professional for the cost of such services, which cost shall not exceed the

amount of the proposal.

6) Services rendered by the Professional in connection with the coordination of these additional services shall be considered within the scope of the original Work Order and no additional fee shall be due the Professional.

E. At the end of each month, the Professional shall submit an invoice for services rendered during that month for each task as outlined in the various Work Orders.

F. If the hourly rate method is used, then the hourly rate schedule attached as Exhibit "C" shall be used. Annually, Professional may negotiate with the City a revision to the attached hourly rate schedule.

G. Professional shall not charge separately or additionally for cell phones, long distance, U.S. postage, computer use, non-work product reproduction or internal other direct costs. Such costs are considered to be included in the multiplier or salary rate that is paid.

H. The Professional shall not apply a premium for overtime, holiday, or other working conditions. All charges to the City will be based upon regular base hourly rate costs.

3. CITY'S RESPONSIBILITY: The City shall furnish the Professional with all existing data, plans, profiles, and other engineering information available and useful in connection with the proposed project now on file with the City, which shall be returned to the City upon the completion of the services to be performed by the Professional, unless such data, plans, profiles, and other data are necessary for daily operations; then such forms of information shall be promptly photocopied by the Professional and returned to the City.

4. CITY'S DESIGNATED REPRESENTATIVE: It is understood and agreed that the City designates the City Manager or his/her designated representative to represent the City in all technical matters pertaining to and arising from the work and performance of this Contract whose responsibility shall include:

A. Examination of all reports, sketches, drawings, cost estimates, proposals and other documents presented by the Professional, and rendering in writing decisions pertaining thereto within a reasonable time so as not to materially delay the work of the Professional.

B. Transmission of instructions, receipt of information, interpretation, and definition of City policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Contract.

C. Give prompt written notice to the Professional whenever the City observes or otherwise becomes aware of any defects or changes necessary in the

project.

5. CHANGES IN SCOPE: The City may, from time to time, request changes in the scope of the services of the Professional to be performed hereunder. Such changes, including any increase or decrease in the amount of the Professional's compensation, shall not be binding unless mutually agreed upon by and between the City and the Professional, and incorporated in written amendments to the Work Order.

6. TERMINATION OF THE CONTRACT FOR DEFAULT: If, through any cause, Professional shall default in performance of this Agreement in accordance with its terms and has failed to cure such default within 15 days after notice specifying such default, City may terminate this Agreement.

A. In the event of such termination, all finished or unfinished documents, data, studies, plans, tracings, specifications, and reports prepared by Professional under this Agreement shall, at the option of City, become its property.

B. In the event of such termination, City may take over the work and services and prosecute them to completion by contract or otherwise, and Professional shall be liable to City for any excess costs caused to City by reason of such completion by City. Any such excess costs shall be liquidated by use of any retained percentages of progress payments due or work completed prior to termination for default. If such retained funds are insufficient to liquidate such liability, City shall make a written demand upon Professional for the payment of the balance of such liability.

C. In case City shall act under this section, Professional shall deliver to City within 10 days all finished or unfinished documents, data, studies, plans, tracings, specifications, and reports prepared by Professional under this Agreement. In the event of Professional's failure to make such delivery upon demand, then and in that event, Professional shall pay to City any damages it may sustain by reason of such failure.

7. TERMINATION OF THE CONTRACT FOR CONVENIENCE: City may terminate this Agreement, or any portion of the services to be performed under this Agreement, at any time upon thirty (30) day notice in writing from City to Professional, or if sufficient funds have not been appropriated to cover the estimated requirement, this Agreement shall automatically terminate. If this Agreement is terminated by City as provided in this section, Professional shall deliver to City all finished or unfinished documents, data, studies, and reports prepared by Professional under this Agreement and these shall be and become the property of City. Payment for the work performed before the effective date of such termination shall be based upon an estimate of the services actually performed by Professional to the date of termination. Such estimate shall be mutually agreed upon by City and Professional. Payment so made to Professional shall be in full settlement for services rendered under this Agreement.

8. NON-EXCLUSIVE CONTRACT: The City reserves the right at its sole discretion to enter into contracts with other Professionals to provide identical, similar or other services as those identified in the various Work Orders. The City, through its representative, shall, in its sole discretion, assign work to the firm providing professional

services as it sees fit. This Agreement in no way guarantees any future work. Professional shall have no right to appeal or challenge the City's decision regarding distribution of work.

9. TERM OF THE CONTRACT: Unless terminated sooner pursuant to the provisions of the "TERMINATION OF CONTRACT" clauses contained in paragraphs six (6) and seven (7) herein, and subject to the availability of appropriated funds, this Contract shall take effect immediately upon its execution by the parties, and is to continue in force for a period of five years from the date of such execution.

10. LIABILITY OF THE PROFESSIONAL/INDEMNIFICATION: The Professional hereby does indemnify and hold harmless the City, its officers and employees from liability, damages, losses and costs, including but not limited to reasonable attorneys' fees, resulting from any and all claims, actions, or suits to the extent caused by the negligence, recklessness or intentional wrongful conduct of the Professional and other persons or firms employed or utilized by the Professional in the performance of services under this Agreement in an amount of \$1,000,000.00 per occurrence as provided for by Sections 725.06 and 725.08, Florida Statutes, as amended. The parties agree that the indemnification amount bears a reasonable commercial relationship to this Agreement, because this is a general consulting arrangement that will include services for yet to be determined projects of varying size and cost, and further, it represents the minimum indemnification amount provided in Section 725.06, Florida Statutes, as amended. The specific considerations given for the promises of the Professional set forth in this paragraph are the employment of the Professional pursuant to this Agreement, other good and valuable considerations and Ten Dollars (\$10.00) in hand paid by the City to the Professional, receipt whereof is hereby acknowledged and the adequacy of which the Professional accepts as completely fulfilling the obligations of the City. Notwithstanding the provisions of this section, nothing contained herein shall be construed as a waiver of any immunity from, or limitation of liability the City has under the Doctrine of Sovereign Immunity of Section 726.28, Florida Statutes, as amended.

11. INSURANCE:

A. The Professional shall purchase insurance coverage that will satisfactorily insure Professional against claims and liability that could arise because of the execution of this Contract. The Professional will provide written proof of its insurance coverage from time to time as reasonably requested by the City. The Professional shall maintain during the life of this Contract insurance approved by City of the following types:

1) Worker's Compensation: For all of its employees engaged in work on the project under this Contract. In case any employee engaged in hazardous work on the project is not protected under the Worker's Compensation statute, the Professional shall provide Employer's Liability insurance for the protection of such of its employees not otherwise protected under such provisions.

Coverage A - Worker's Compensation - Statutory

Coverage B - Employer's Liability - \$1,000,000

2) Liability: Comprehensive General Liability insurance including, but not limited to:

- a) Independent Contractor's Liability;
- b) Contractual Liability;
- c) Personal Injury Liability.

The minimum primary limits for bodily injury liability shall be no less than \$1,000,000 per person, including death and \$2,000,000 per occurrence with an annual aggregate of not less than \$2,000,000, and no less than \$500,000 Property Damage Liability per person and \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. City shall be named as additional insured.

3) Automobile Liability: Automobile Liability insurance including all owned, hired, and non-owned automobiles. The minimum primary limits shall be no less than \$1,000,000 per person, including death and \$2,000,000 per occurrence and property damage limits of not less than \$1,000,000 per occurrence. City shall be named as additional insured.

4) Professional Liability: Professional Liability insurance covering professional services rendered in accordance with this Contract in an amount not less than \$1,000,000.

B. Certificates of Insurance: The Professional shall furnish to the City certificates of insurance allowing thirty (30) days written notice of any change, cancellation, or non-renewal. Such certificates shall contain the following wording: "SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL THIRTY (30) DAYS NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN." If the insurance policies expire during the term of any Work Order for services hereunder, a renewal certificate shall be filed with the City thirty (30) days prior to the renewal date.

12. TIME OF ESSENCE: Time is of the essence in this Agreement and in each Work Order.

13. AMENDMENT: This Agreement may be modified or amended, but only by a writing signed by both parties.

14. NOTICES: Any notice required or that may be given under, or documents (invoices, etc.) required to be provided pursuant to this Agreement shall be provided in writing by certified mail return receipt requested, or customarily used overnight transmission with proof of delivery, to the following parties, with mandatory copies, as provided below:

To: City of Fellsmere
22 South Orange St.
Fellsmere, FL 32948-6714
Email: cityclerk@cityoffellsmere.org
Facsimile: (772) 646-6301

To: Professional at the address shown above.

Any notice shall be deemed given upon delivery unless the notice is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person sending the notice, whereupon the notice shall be deemed given as of the date it is mailed or sent. A party may change their foregoing address by providing written notification to the other in the manner provided herein.

15. WAIVER: Each party may, by written notice to the other, (i) extend the time for the performance of any of the obligations or other actions of the other party; (ii) waive any inaccuracies in the representations or warranties of the other party contained in this Agreement or in any document delivered pursuant to this Agreement; (iii) waive compliance with any of the covenants of the other party contained in this Agreement; or (iv) waive, in whole or in part, performance of any obligations of the other party. Waiver by any party of any breach hereunder shall not operate or be construed as a waiver of any subsequent or similar breach.

16. RULES OF CONSTRUCTION: The following rules of construction govern this Agreement: (1) Gender, etc. The singular includes the plural, the plural includes the singular, and the use of any gender shall be deemed to include the opposite and neutral gender as the case may be; (2) Captions. All headings are inserted herein for the parties' convenience and shall not in any way modify, limit, construe, or otherwise affect interpretation of this Agreement; (3) Construction. The parties are deemed to have participated equally in preparation of this Agreement. Neither this Agreement nor any provision herein shall be construed more strictly for or against either party by reason of that party's responsibility for drafting; and (4) Reference to Agreement. *Hereof, herein, or hereunder* and other compounds of *here* shall mean and refer to the entire Agreement and not to any particular section, article, provision, exhibit, or paragraph unless required by context.

17. FORCE MAJEURE: City shall be not liable for or be deemed to be in breach on account of delays due to any cause beyond its reasonable control, including but not limited to acts of God, acts of the other party, acts of civil or military authority, labor disputes, fire, terrorism, riots, civil commotion's, sabotage, war, embargo, blockade, floods, earthquakes, hurricanes, tornadoes, or other natural disasters, epidemics, pandemics, delays in transportation, or when due to governmental restrictions.

18.NEGOTIATION DATA: The Professional hereby certifies, covenants, and warrants that wage rates and other factual unit costs supporting the compensation provided to the City are accurate, complete, and current as of the date of negotiation. All such Contract adjustments shall be made within one (1) year following the date of final billing or acceptance of the work by the City in writing, whichever is later. Records of costs incurred under the terms of this Contract shall be maintained by the Professional and made available to the City during the period of this Contract, and for five (5) years after the final payment is made. Copies of these documents and records shall be furnished to the City without cost.

19.OWNERSHIP OF DOCUMENTS, COMPUTER PROGRAMS & ELECTRONIC FILES: It is understood and agreed that all documents, computer programs, and electronic files, including detailed reports, plans, original tracings, specifications, and all other data, prepared or obtained by the Professional in connection with its services hereunder shall be delivered to, and shall become the property of the City prior to the final payment to the Professional. The Professional shall not be liable for any use by the City of said documents or data if modified in any manner without written approval of the Professional. The City may use the Professional's drawings on any project in addition to the project described in the Scope of Services, Work Order or any other scope of work, provided the City notifies the Professional of its intended use.

20.WORK COMMENCEMENT/PROGRESS/DELAYS:

A. The services to be rendered by the Professional shall commence upon execution by the City of a written Work Order.

B. The Professional agrees to abide by the schedule for performance of the contracted services as set forth within each Work Order. The City will be entitled at all times to be advised in writing at its request as to the status of the work being done by the Professional, and of the details thereof.

C. In the event there are delays on the part of the City or regulatory agencies as to the approval of any of the plans, permits, and drafts of special provisions submitted by the Professional which delay the project schedule completion date, the City shall grant to the Professional in writing an extension of the Contract time equal to the aforementioned delays. The City shall be solely responsible for determination of whether any extension of the Contract time should be awarded to the Professional.

D. The Professional shall maintain an adequate and competent staff of professionals and may associate with other qualified firms for the purpose of rendering services hereunder, without cost to the City, and upon written approval by the City. The Professional, however, shall not sublet, assign, or transfer any work under this Contract without the prior written consent of the City.

21.STANDARDS OF CONDUCT:

A. The Professional warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Professional to solicit or secure this Contract, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Professional any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Contract.

B. The Professional covenants that it or any of its employees presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of services hereunder.

C. The Professional agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as amended, as it relates to work performed under this Contract, which standards will by reference be made a part of this Contract as though set forth in full. The Professional agrees to incorporate the provisions of this section in any subcontract into which it might enter with reference to the work performed, that may be approved by the City.

D. The City reserves the right to cancel and terminate this Contract, without penalty in the event that the Professional or any employee, servant, or agent of the Professional is indicted or has any direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Professional for or on behalf of the City. It is understood and agreed that in the event of such termination, that the Professional shall be compensated for services rendered under this Contract up to the time of termination in accordance with Paragraph 7 hereof. The City also reserves the right to terminate and cancel this Contract in the event that the Professional shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.

22. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS: The Professional shall comply with all Federal, State, and Local laws and ordinances applicable to the work or payment for work thereof.

23. NON-DISCRIMINATION: The Professional will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, color, race, religious beliefs, disability, national origin, or sex. The Professional shall provide a harassment-free workplace, with any allegations of harassment given priority attention and action by management. The Professional affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes, as amended, and that at no time has the Professional been placed on the discriminatory Vendor List. The Professional further agrees that it shall not violate such

law and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement. The Professional shall place the contents of this section in all subcontracts into which it might enter with reference to the work performed that may be approved by the City.

24. NON-ASSIGNMENT: The Professional may not assign, sublicense, nor otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the City. Any assignment, sublicense, or transfer occurring will be null and void; provided, however that City will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to the Professional. In the event that City approves transfer of the Professional's obligations, the Professional remains responsible for all work performed and all expenses incurred in connection with this Agreement.

25. INDEPENDENT CONTRACTOR: It is hereby mutually agreed that the Professional is and shall remain an independent contractor and not an employee of the City.

26. CONTROLLING LAW: All questions pertaining to the validity and interpretation of this Contract shall be determined in accordance with the laws of Florida applicable to contracts made and to be performed within the State. Venue shall rest solely in Indian River County, Florida. The parties consent to the exclusive jurisdiction of such courts, waive any objection to venue in such courts, and agree that the doctrine of forum non conveniens shall not be asserted in any proceeding brought in such courts. In any proceedings brought under this Agreement the parties waive a jury trial.

27. ENTIRE AGREEMENT: This Contract constitutes the entire agreement between the parties with respect to the subject matters. All prior agreements, representations, statements, negotiations, and undertakings are hereby superseded. Any alterations or violations of the terms of this Contract shall not be valid unless made in writing and signed by the parties. If, any term or provision of this Contract shall be found by a court of competent jurisdiction to be illegal or unenforceable, then, notwithstanding, the remainder of the Contract shall remain in full force and effect.

28. BENEFIT OF AGREEMENT: This Agreement shall be binding upon the parties and their respective affiliates, associates, heirs, executors, administrators, successors, legal representatives and permitted assigns.

29. RIGHTS IN THIRD PARTIES: Except as may otherwise be specifically provided herein, nothing which is expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person, firm, corporation or limited liability company, other than the parties, any rights or remedies under or by reason of this Agreement.

30. AUTHORITY: This Agreement is entered into in accordance with and is subject to the provisions of the statutes, codes, and municipal regulations of the City of Fellsmere, Indian River County and State of Florida as the case may be.

31. COMPLIANCE WITH LAWS: Professional shall at all times observe and comply with all laws, ordinances, and regulations of the federal, state, local, and City government that may in any manner affect the performance of this Agreement.

32. LIMITATION ON ACTIONS; NOTICE OF CLAIM OR ACTION: Professional shall be barred from making a claim against or from seeking relief against City of any kind whatsoever, including, without limitation, damages, indemnity and contribution, for any claim of any kind whatsoever that it may assert against City UNLESS Professional (1) shall have first given written notice of such claim to City within one hundred eighty (180) days of the time when Professional first either knew or should have known of facts reasonably suggesting the existence of the claim and (2) filed suit or commenced mediation on such claim within one hundred eighty (180) days of the time when it either first knew or should have known of facts reasonably suggesting the existence of the claim. Notice of a claim hereunder shall provide sufficient information so that City may evaluate facts and circumstances surrounding the claim.

33. COUNTERPARTS AND FACSIMILES: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument. A facsimile or electronic transmission of an executed copy of this Agreement shall be considered for all purposes to be an original.

34. AUDIT, INSPECTION, AND REVIEW OF RECORDS: Professional shall maintain records showing actual time devoted, personnel expenses and charges, and costs incurred in its performance hereunder. Professional shall permit the authorized representatives of City to inspect and audit all data and records of Professional relating to work done under this Agreement. Professional shall make these records available at reasonable times during the Contract period.

35. ACCOUNTING AND AUDITS: The Professional agrees to maintain books, records, documents and other evidence according to generally accepted accounting principles, procedures, and practices that sufficiently and properly reflect all costs of any nature expended in the performance of this Agreement, and retain said copies for a period of five (5) years after termination of the conclusion of this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) years, the records shall be retained until completion of the action and resolution of all issues which arise from it. The Professional agrees to make the books, records, documents and other evidence available for inspection, review, or audit

by the City, its authorized agent and state personnel of the Office of the Auditor General, Department of Financial Services, or other state or federal personnel authorized by City.

36. CITY REVIEW OF DESIGN DOCUMENTS: Review by City of design documents is not made for purposes of determining accuracy, adequacy or completeness of such documents and shall not be construed to alter the Professional's responsibilities hereunder.

37. PUBLIC RECORDS: All documents, papers, letters, or other materials relating to this Contract that are made or received in conjunction with this Contract, and which are required by law to be maintained, must be available for public access and for audit purposes. Said records shall also be maintained per Chapter 119 and other applicable Florida Statutes.

IF THE PROFESSIONAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROFESSIONAL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 22 SOUTH ORANGE STREET, FELLOSMERE, FLORIDA 32948 (772) 646-6301, CITYCLERK@CITYOFFELLOSMERE.ORG

37.01 REQUIREMENTS: The Professional shall comply with Florida public records law, specifically to:

37.01.1 Keep and maintain public records required by the City to perform the service.

37.01.2 Upon request from the City's custodian of public records, provide the City 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 Section 119.07, Florida Statutes, as amended, or as otherwise provided by law.

37.01.3 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 Professional does not transfer the records to the City.

37.01.4 Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Professional or keep and maintain public records required by the City to perform the service. If the Professional transfers all public records to the City upon completion of the contract, the Professional shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Professional keeps and maintains public records upon completion of the contract, the Professional shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from

the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

37.02 REQUESTS: Requests for public records shall be processed as follows:

37.02.1 If Professional receives a request to inspect or copy public records relating to the City's contract with the Professional, the Professional shall advise the requesting party that the request must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Professional of the request, and the Professional must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

37.02.2 If the Professional does not comply with the City's request for the records, such refusal to comply shall constitute grounds for immediate cancellation of this contract at the sole discretion of the City.

37.02.3 Should the Professional fail to provide the public records to the City within a reasonable time the Professional may be subject to penalties under Section 119.10, Florida Statutes.

37.03 ENFORCEMENT: Enforcement of requests for public records by civil action will be processed as follows:

37.03.1 If a civil action is filed against the Professional to compel production of public records relating to the City's contract for services, the Court shall assess and award against the Professional the reasonable costs of enforcement, including reasonable attorneys' fees, if:

(a) The Court determines that the Professional unlawfully refused to comply with the public records request within a reasonable time; and

(b) At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Professional has not complied with the request, to the City and to the Professional.

37.03.2 A notice complies with subparagraph 37.03.1(b) if it is sent to the City's custodian of public records and to the Professional at the Professional's address listed in this contract or to the Professional's registered agent. Such notice must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

37.03.3 A Professional who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

38. PUBLIC ENTITY CRIME STATEMENT: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or proposal on a contract to provide any goods or services to a public entity, may not submit a bid or proposal on a contract with a public entity for the construction or repair

of a public building or public work, may not submit bids or proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or professional under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36-months from the date of being placed on the convicted vendor list.

39. STANDARD OF CARE REQUIRED FOR PROFESSIONAL SERVICES:

39.1 Professional agrees to perform professional services associated with the requested work in accordance with this Agreement and applicable executed Work Order(s), in a manner consistent with the professional skill and degree of care and diligence ordinarily provided by other similar professionals in the same or similar locality under the same or similar circumstances and as further set forth herein.

39.2 Professional further agrees that the standard of care required of Professional to provide the professional services under this Agreement includes the following, and that the Professional shall:

39.2.1 Ensure the adequacy of work provided under this Contract with appropriate due diligence and a reasonable standard of care in a manner that adequately captures scope, complexity and design constraints. This includes, but is not limited to, environmental, engineering, geotechnical, architectural, landscape architecture, and surveying professional services and appropriate site visits.

39.2.2 Correct any errors and omissions, and prepare any necessary plan revisions not involving a change in the scope of the work required, that may be required because work was determined by the City to be unsatisfactory, substandard, defective and/or not otherwise not in compliance with the standard of care as set forth in this Contract at no additional cost. Any person or entity may bring concerns about the work to the attention of the City for its review and determination. This remedy shall be cumulative to all other remedies available under law.

39.2.3 Be responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports, and other services furnished by Professional under this Contract. Professional shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports, and other services.

39.2.4 Be responsible for recruiting, hiring, training, supervising, disciplining and discharging personnel necessary to maintain an adequate staff of experienced and qualified personnel licensed in the State of Florida to perform all professional services contemplated by this Contract.

39.2.5 Comply with federal, state and local laws, codes and ordinances applicable to the work. Failure or inability on the part of Professional to have complete

knowledge and intent to comply with such law, rules, and regulations shall not relieve Professional from its obligation to completely perform any task assigned pursuant to this Contract.

39.2.6 Cooperate fully with City in the scheduling and coordination of all phases of the work.

39.2.7 Cooperate and coordinate with other City contractors.

39.2.8 Exercise an appropriate Quality Control Program to provide adequate oversight and supervision over all of Professional's sub-contractors.

39.2.9 Report the status of the work to the City as required in the Work Order or upon request and hold pertinent data, calculations, field notes, records, sketches and other projects open to the inspection of the City or its authorized agent at any time.

39.2.10 Submit all design computations, sketches and other data representative of the work's progress for the City's review as specified in the applicable Work Order. Submit the final work upon incorporation of any modifications requested by the City during any previous review, for the City's review. Any City approval of the Professional's plans, design, or specifications shall not be deemed to diminish or waive the standard of care or skill required of the Professional.

40. QUALITY CONTROL: The Professional agrees to a high level of quality control and accuracy in keeping with its standard of care. The City may request additional data collection or re-analysis of the data at no expense to the City. If the original data collected and/or data analysis is later found to be accurate and reasonable, the City shall be compensated by the Professional at the Professional's hourly rate for the additional work performed by staff and providing verifiable documentation. The Professional acknowledges that the City will periodically evaluate the Professional's performance and that the evaluation will be used by the City in determining the Professional's qualifications for future contracts with the City.

41. E-VERIFICATION SYSTEM: Pursuant to Section 448.095, Florida Statutes, as amended, all Parties are obligated to register with and utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By signing below, the Parties are certifying that they are registered with, and use, the E-Verify system for all newly hired employees.

42. PROHIBITION AGAINST CONTINGENT FEES: Professional warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Professional, 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 Professional any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

43. TERMINATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES: Professional certifies that it and those related entities of Professional as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes, as amended, and are not engaged in a boycott of Israel. In addition, if this Agreement is for goods or services of one million dollars or more, Professional certifies that it and those related entities of Professional as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, as amended, and are not engaged in business operations in Cuba or Syria.

City may terminate this Agreement if Professional is found to have submitted a false certification as provided under Section 287.135(5), Florida Statutes, as amended, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by Section 287.135, Florida Statutes, as amended. City may also terminate this Agreement if Professional, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in Section 215.4725, Florida Statutes, as amended.

44. NON-APPROPRIATION: It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by the City under this Agreement, the City shall notify Professional that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to the City.

45. ATTORNEY'S FEES: In the event of any litigation regarding the breach or interpretation of this Agreement or otherwise to enforce its provisions, the prevailing party in such proceedings shall be entitled to recover, in addition to any relief the court may allow, reasonable attorney's fees, paralegal fees, and costs incurred in connection with such proceeding, including those incurred in connection with any related appellate or bankruptcy proceeding.

46. DELAY IN ENFORCEMENT: Enforcement of the terms and provisions of this Agreement will be at the discretion of City or Professional. Any forbearance on behalf of City or Professional to exercise its rights hereunder in the event of any breach by the other party will not be deemed or construed to be a waiver of that party's rights hereunder in the event of any subsequent breach.

47. SOVEREIGN IMMUNITY: Nothing contained in the Agreement shall be construed as a waiver or attempted waiver of immunity from, or limitation of, liability the City has under the Doctrine of Sovereign Immunity under the Florida Constitution and Florida Statutes, including but not limited to, Section 768.28 Florida Statutes, as amended. In

the event any claim or lawsuit is brought against the City the City shall not be liable to pay a claim or a judgment by any one person or entity or any claim or judgment or portions thereof which when totaled with all other claims or judgments paid arising out of the same incident or occurrence, which exceeds the amount of liability as set forth in Section 768.28 Florida Statutes, as amended, provided that the payment of said claim(s) shall be further limited to the actual amount of insurance proceeds paid for such claim(s). Nothing in this Agreement shall be construed as consent by the City to be sued by third parties in any matter whether arising out of this Agreement or anything else whatsoever.

48. ENTIRE AGREEMENT: This instrument embodies the entire agreement of the parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communication, representation, or agreement, either verbal or written, between the parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the Professional and the authorized agent of the City.

IN WITNESS WHEREOF, the parties have hereto caused the execution of this Agreement the year and date first above written.

CITY OF FELLSMERE, FLORIDA

Attest: _____
City Clerk

By: _____
Mayor

Date _____

Date _____

PROFESSIONAL

(Name of Firm)

WITNESS

By: _____

Print Name _____

its President

Date _____

Date _____

WITNESS

Print Name _____

Date _____