

AGREEMENT TO FURNISH SERVICES TO THE
CITY OF FERNANDINA BEACH

This AGREEMENT made on the _____ day of _____, 20____ between the **City of Fernandina Beach**, a municipal corporation whose address at 204 Ash Street, Fernandina Beach, Florida 32034 ("CITY") and the consultant, _____, whose address is _____("CONSULTANT").

ARTICLE 1 - SCOPE OF SERVICES

The parties hereto agree that under this Agreement, the CONSULTANT will provide professional services of a specified nature as described in Exhibit "A" - Scope of Services, attached hereto and incorporated as if fully set forth herein, when and if the City of Fernandina Beach requests the CONSULTANT to provide such services.

ARTICLE 2 - TERM OF AGREEMENT

This Agreement shall commence on the _____Day of _____, 2021. The Agreement shall terminate _____ from the date first written above.

A. Fees

1. Lump Sum Method - As consideration for providing the services enumerated in Article I, the City of Fernandina Beach shall pay the CONSULTANT fees as defined in the purchase or task order. The CONSULTANT's fees shall be paid in a Lump Sum Amount, which includes all of the CONSULTANT's Direct Salary, Overhead Costs, Direct Expenses, Sub-contractors, and Profit. The Lump Sum Amount shall not exceed _____ (\$_____), the basis of which is detailed in Exhibit "A" and Exhibit "B," attached hereto and incorporated as if fully set forth herein.

2. Standard Hourly Rate Method - Wherein the City of Fernandina Beach shall pay the CONSULTANT the agreed upon hourly rates contained in Exhibit "B" for time actually engaged on certain work for additional services as defined in the purchase or task order and covered by this Agreement.

B. Reimbursable Expenses

The CONSULTANT's out-of-pocket expenses including, but not limited to, travel and living expenses of the CONSULTANT's employees when they are away from their home office in accordance with the CITY's policies when engaged on work under this agreement, long-distance telephone, and postage charges will be included in the Lump Sum Price.

C. Direct Project Expenses

Charges for printing, reproduction, and use of computer-aided design equipment and field equipment performed by the CONSULTANT, and the use of the CONSULTANT's and employee's automobiles will be included in the Lump Sum Price.

D. Status Report

The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice (format to be provided by City). In no case shall the CONSULTANT bill the City of Fernandina Beach for more than one hundred (100) percent of the previously agreed upon purchase order or task order fee, unless authorized by the City of Fernandina Beach in writing.

E. Standard Hourly-Rate--Definition

The CONSULTANT's standard hourly rates shall be provided to the City of Fernandina Beach if required for future purchase or task orders.

ARTICLE 3 - TERMS OF PAYMENT

A. Monthly Invoices

The CONSULTANT shall submit invoices once each month to the City of Fernandina Beach for the services performed and the expenses and other charges accounted for under this Agreement during the preceding month. Separate invoices shall be submitted for each task order or purchase order. Payment as prescribed in Article 2 for services rendered by the CONSULTANT during the previous billing period shall be processed in accordance with the Florida Prompt Payment Act, Section 218.70, Florida Statutes.

B. Payment of Expenses

Payments on account of expenses shall be made upon completion of the project and delivery of deliverables to City. Documentation supporting the reimbursable expenses must be attached to the statement of expenses incurred. The documentation may include, but is not limited to, copies of invoices and log sheets. The City Manager or his designee shall make a final determination as to whether documentation is sufficient to process invoices for payment.

C. Sales Tax

The CONSULTANT shall pay all applicable sales taxes; or the City of Fernandina Beach shall provide to the CONSULTANT the tax exemption information, where appropriate.

ARTICLE 4 - TERMS OF PERFORMANCE

It is further mutually agreed by the parties hereto that:

A. Starting Work

The CONSULTANT will not begin work on any of the services listed in Article I until authorized in writing to proceed.

B. Information Provided by Owner

The City of Fernandina Beach shall make available to the CONSULTANT all technical data in the City of Fernandina Beach's possession, including previous studies, analytical data, maps, surveys, and other information required by the CONSULTANT. The City shall not be liable for the accuracy of information supplied to the CONSULTANT; the CONSULTANT shall verify the accuracy of supplied information.

C. Suspension of Work

If any services covered by this agreement to be carried out by the CONSULTANT shall be suspended, abated, or abandoned at the direction of the City of Fernandina Beach for reasons unrelated to the quality of work provided by the CONSULTANT, the City of Fernandina Beach shall pay the CONSULTANT for services actually rendered for such suspended, abated, or abandoned work, and any reasonable additional documented costs incurred in an orderly closing of its activities, with the payment to be based on the fees as established in this agreement.

D. Services in Connection with Claims and Litigation

The scope and extent of services to be provided under a purchase order or task order does not include personnel time of the CONSULTANT or time of personnel working under sub-agreements and related expenses required or requested to support, document, bring, defend, or assist in litigation and/or claims, undertaken by or defended by the City of Fernandina Beach. All such services required or requested of the CONSULTANT shall be considered additional services entitling the CONSULTANT to additional compensation under this agreement. The amount of such additional compensation shall be set forth in a separate task order as reviewed and approved by the City.

E. Ownership of Documents

The drawings, specifications, calculations, supporting documents, or other work products which are listed as deliverables in a purchase order or task order shall become the property of the City of Fernandina Beach upon delivery and final payment to CONSULTANT. The CONSULTANT may keep copies or samples thereof and shall have the right to use such drawings, specifications, calculations, supporting documents, or other documents. The City of Fernandina Beach Accepts sole responsibility for the reuse of any such documents in a manner other than as initially intended, or for any use of incomplete documents unless prior written approval is obtained from the CONSULTANT. Any such deliverables should be used solely for the stated purpose.

F. Account Records

The CONSULTANT's accounting records, insofar as they pertain to invoicing the City of Fernandina Beach or to disbursements made from the CONSULTANT's account for work under this agreement, shall be open to City of Fernandina Beach's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five and 00/100 Dollars (\$25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for three (3) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

G. Force Majeure

Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The CONSULTANT or City of Fernandina Beach may suspend its performance on any assignment as a result of a force majeure without being in default of this agreement, but upon the removal of such force majeure, the CONSULTANT or City of Fernandina Beach shall resume its performance as soon as is reasonably possible.

H. Approval of Changes

The City of Fernandina Beach must approve any changes in the scope, specifications, or other conditions under which the services specified or referred to herein are to be performed which result in additional costs or expenses to the City of Fernandina Beach or which would change the underlying purpose of the purchase or task order. Changes include, but are not limited to: issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

I. Authorized Representative

Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City of Fernandina Beach to represent and act for the CONSULTANT and shall inform the City of Fernandina Beach in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City of Fernandina Beach informed of any subsequent changes in the foregoing. All notices, determinations, instructions, and other communications given to the authorized representative by the City of Fernandina Beach shall be binding upon the CONSULTANT and City of Fernandina Beach. The authorized representative of the City of Fernandina Beach shall be the City Manager or his designee.

J. Termination

The City of Fernandina Beach or the CONSULTANT may terminate, suspend, or delay this agreement for any reason by giving at least thirty (30) days written notice to the other party of their intent to terminate, suspend, or delay. In the event the agreement is terminated, suspended or delayed by the City of Fernandina Beach for reasons unrelated to the quality of work provided by the CONSULTANT, the City of Fernandina Beach shall forthwith pay the CONSULTANT in full for all work previously authorized and actually performed prior to the Notice of Termination, Suspension or Delay. This payment shall be the sole financial obligation or responsibility of the City of Fernandina Beach for compensation hereunder in the event of termination, suspension or delay in accordance with the provisions of this paragraph. This agreement shall continue in effect until a Notice of

Termination, Suspension or Delay is given by either party as set forth above. Upon termination, suspension or delay, at the City of Fernandina Beach's request, the CONSULTANT shall turn over to the City of Fernandina Beach all work products and deliverables completed or partially completed up to the date of termination, suspension or delay, including but not limited to, subcontractor work products, surveys, drawings, model results, and specifications. Upon payment of all monies owed to Consultant to date, the City of Fernandina Beach shall have full rights to use all such work products and deliverables for any project, and in any manner, in the sole discretion of the City. The City of Fernandina Beach accepts sole responsibility for the use of the above-referenced work products and deliverables unless prior written approval is obtained from the CONSULTANT. However, in no event shall CONSULTANT's internal work products, work papers, proprietary information, software, internal spreadsheets, etc. be turned over.

ARTICLE 5 - INSURANCE AND INDEMNIFICATION

A. Indemnification

The parties recognize that the CONSULTANT is an independent contractor. The CONSULTANT agrees to assume liability for and indemnify and hold harmless, the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT, its agents, officers, contractors, subcontractors, employees, or anyone else employed or utilized by the CONSULTANT in the performance of this Agreement. The CONSULTANT's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the CONSULTANT against the City and the CONSULTANT hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

B. CONSULTANT's Status as an Independent Contractor

That status of the CONSULTANT under this agreement is that of an independent contractor. Nothing in this agreement shall create or be construed as creating a partnership between the City of Fernandina Beach and the CONSULTANT, nor shall the CONSULTANT be an agent of the City of Fernandina Beach.

PURSUANT TO FLORIDA STATUTES § 558.0035 (2013) AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE.

C. Waiver of Subrogation

The City of Fernandina Beach and the CONSULTANT waive all rights against each other for damages caused by perils covered by insurance provided under this agreement to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance held by the City of Fernandina Beach and the CONSULTANT as trustees.

The City of Fernandina Beach and the CONSULTANT waive all rights against each other for loss or damage to any equipment used in connection with performance under this agreement and covered by any property insurance.

If the insurance policies referred to in this article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed; failure to obtain endorsement nullifies the waiver of subrogation.

D. CONSULTANT's Insurance

The CONSULTANT shall not commence any work in connection with this agreement until it has obtained all of the following types of insurance and such insurance has been approved by the City of Fernandina Beach, and has named the City of Fernandina Beach as an additional insured by separate written endorsement, except for Worker's Compensation Coverage.

Such insurer shall have a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance authorizing it to write insurance policies in the State of Florida and be doing business in the State of Florida. Insurers shall have at least a Policy Holders Rating of A-, and Financial Rating of Class IV as identified in the latest issue of "Bests Key Rating Guide" unless otherwise accepted by the City of Fernandina Beach in writing.

The CONSULTANT's insurance, and the insurance of any other party bound to the CONSULTANT shall be considered primary. The City of Fernandina Beach's insurance, if any, shall be considered excess, as may be applicable to claims which arise out of indemnifications, insurance, certificates of insurance and any additional insurance provisions of this agreement.

E. Loss Deductible

The City of Fernandina Beach shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of the CONSULTANT.

F. Certificate of Insurance

The City of Fernandina Beach shall be furnished proof of insurance coverage as follows:

- The name of the insured, the name of the insurer, the number of the policy, its effective date, and its termination date;
- Statement that the insurer will mail notice to the City of Fernandina Beach and a copy to the CONSULTANT at least thirty (30) days prior to any material changes in provisions, cancellation, renewal, or non-renewal of the policy;
- Certificate of Insurance shall be in the form as approved by the City of Fernandina Beach and such Certificate shall clearly state all the coverage required in this Article;
- If requested by the City of Fernandina Beach, the CONSULTANT shall furnish complete copies of all insurance Declaration Pages; and
- Receipt of certificates or other documentation of insurance or policies or copies of policies by the City of Fernandina Beach or by any of its representatives which indicate less coverage than required by this agreement does not constitute a waiver of the CONSULTANT's obligations to fulfill the requirements of this Article.

G. Workers' Compensation Insurance

The CONSULTANT shall have in full force, during the life of this agreement, Workers' Compensation and Employer's Liability Insurance for all its employees connected with work under this agreement. The CONSULTANT may provide a workers' compensation waiver in lieu of workers' compensation insurance where such waiver is properly approved by the Florida Department of Labor and Employment Security and accepted by the City of Fernandina Beach in writing. Such insurance or waiver shall comply with the Florida Workers' Compensation Law. In case any class of work conducted under this agreement is not protected under the Workers' Compensation statute, the CONSULTANT shall provide adequate insurance, satisfactory to the City of Fernandina Beach, for the protection of employees not otherwise protected.

H. Liability Insurance

The CONSULTANT shall have in full force, during the life of this agreement, Commercial General Liability and Commercial Automobile Liability Insurance that shall protect the City of Fernandina Beach from claims for damage for bodily injury and personal injury, including accidental death, as well as claims for property damages

which may arise from tasks associated with or carried out under this agreement, whether such operations are by itself or by anyone directly or indirectly employed by them, and the amount of such insurance shall be minimum limits as follows:

- Commercial General Liability:
 - Minimum Coverage is \$1,000,000 per occurrence
 - Coverage shall include premises, operations, products, completed operations, independent contractors, contractual liability covering this agreement, contracts and leases, broad form property damage coverage, personal injury and bodily injury.
 - If Umbrella or Excess liability coverage is used to satisfy the requirements of this Article, it shall not be more restrictive than the underlying insurance policy coverage.

I. Professional Liability Insurance

During the term of this Agreement, the CONSULTANT will carry Errors and Omission insurance which will cover liability for any damage or non-performance on account of any error, omission, or other provable negligence caused by the CONSULTANT. The amount of insurance shall not be less than \$1,000,000 per occurrence and aggregate. The City of Fernandina Beach may require a higher limit as mutually agreed with the CONSULTANT for specific task orders.

ARTICLE 6 - SUCCESSORS AND ASSIGNS

The City of Fernandina Beach and CONSULTANT each binds themselves and their partners, successors, executors, administrators, and assigns to the other party of this agreement and to the partners, successors, executors, administrators, and assignees of such other party in respect to all covenants of this agreement. Neither the City of Fernandina Beach nor the CONSULTANT shall assign, sublet, or transfer any interest in this agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any elected official, officer, employee or agent of the City of Fernandina Beach, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City of Fernandina Beach and CONSULTANT.

ARTICLE 7 - REMEDIES

A. Claims, Counter-Claims, Disputes, Etc.

All claims, counter-claims, disputes, and other matters in questions between the CONSULTANT and the City of Fernandina Beach will be first reviewed by authorized representatives of both parties for a recommended solution. If no solution or resolution is forthcoming, such disputes will be decided by a court of competent jurisdiction convened in the State of Florida.

B. Governing Laws

This agreement shall be governed by the laws of the State of Florida.

C. Venue

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submits itself to the exclusive jurisdiction of the Fourth Judicial Circuit Court, in and for Nassau County, Florida, and the jurisdiction of the United States District Court for the Middle District of Florida, Jacksonville Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Agreement; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense or otherwise in any suit, action or other proceeding, (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever, and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any party hereto is brought in an inconvenient forum, or that the venue of such suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such courts.

D. Attorney's Fees and Costs

In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs, and expenses, including reasonable attorney's fees, as may be set by the Court.

ARTICLE 8 - NONEXCLUSIVE AGREEMENT

This Agreement is not intended to be and shall not be construed as an exclusive contract, and the City of Fernandina Beach may employ additional or other professional consulting firms to perform work contemplated by this agreement without liability to the City of Fernandina Beach.

ARTICLE 9 - CLOSING

A. Validity, Severability and Reformation

The validity, interpretation, construction, and effect of this agreement shall be in accordance with and be governed by the laws of the State of Florida. Any provision or part of this agreement held to be void or unenforceable under any law shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

B. Headings

The headings of the sections of this agreement and capitalizations are for the purpose of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

C. Entire Agreement

This agreement, including the exhibits hereto, constitutes the entire agreement between the parties hereto and supersedes any prior negotiations, representations, agreements, and understandings, either written or oral.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and date first above written:

CITY OF FERNANDINA BEACH, FLORIDA,
a municipal corporation

“CONSULTANT”

Dale L. Martin, City Manager
ATTEST:

By.: _____

Caroline Best, City Clerk

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in blue ink, appearing to be 'TEB', located at the top left of the page.

Tammi E. Bach, City Attorney