

# MASTER CONSULTING AGREEMENT

**THIS MASTER CONSULTING AGREEMENT** (this "Agreement") is entered into as of the Effective Date defined in Article I, below, between COLUMBIA COUNTY (the "**COUNTY**"), a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is Post Office Box 1529, Lake City, Florida 32056, and NORTH FLORIDA PROFESSIONAL SERVICES, INC. (the "**CONSULTANT**"), a Florida Corporation, whose address is Post Office Box 3823, Lake City, Florida 32056 and whose Federal Employer Identification Number is 27-1868423.

WHEREAS, the COUNTY owns and operates a variety of public infrastructure; and,

WHEREAS, the COUNTY desires to retain the services of a competent and qualified CONSULTANT to design, survey, permit, prepare construction documents, assist with construction bidding, and provide certifications for required clearances for a project that will consist of asphalt roadway construction for the following County dirt roadways in the platted subdivision, Hi-Dri Acres (Units 1 and 2): SW Thrasher Ln, SW Finch, SW Dove Way, SW Raven Ln, SW Condor Pl, SW Goose Pl, SW Tarkin Ter, SW Oriole Pl, SW Gulf Dr, SW Pickerel Pl SW Chickadee Way, SW Kestrel Way, SW Bobolink Pl, SW Wheat Pl, SW Pablo, and SW Eglin Pl. The project will include, but is not limited to: topographical and boundary surveys, asphaltic roadway design, stormwater design, and any required tasks required for permitting the construction of the aforementioned roadways.; and

WHEREAS, the COUNTY solicited for these professional services via RFQ 2021-K, an advertised request for qualifications, and received several responsive proposals thereto; and

WHEREAS, after review and consideration of all responsive proposals, the COUNTY desires to engage the CONSULTANT to provide the professional services; and

WHEREAS, the CONSULTANT remains agreeable to providing the COUNTY the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree, as follows:

## 1. Term.

- 1.1. This Agreement shall take effect on February 17<sup>th</sup>, 2022 (the "Effective Date").
- 1.2. The initial term of this Agreement shall be for a three (3) year time period, commencing upon the Effective Date and shall remain in force and effect unless sooner terminated as provided herein. This agreement may be extended for an additional term of three (3) years upon mutual agreement of the parties regarding rates for services and costs.

## 2. Services to Be Performed by the CONSULTANT

- 2.1. The COUNTY does hereby retain the CONSULTANT to furnish, provide and perform the professional services (collectively, the "Services") described in the COUNTY'S Request for Qualification RFQ #2021-K, to include all attachments and addenda, and in the CONSULTANT'S response thereto (collectively, "RFQ 2021-K") is attached hereto as a composite "Exhibit A" and made a part of this Agreement) as those Services may be further specifically designated and authorized by the COUNTY in writing. Such authorization will be issued in the form of a TASK ORDER (TO). All provisions of this Agreement shall apply to any TO as if appearing in full therein. Each TO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated

damages, if applicable, and initiation and completion date. Each TO for a Lump Sum scope will include a schedule of deliverables with associated milestones to complete the deliverables.

- 2.2. The CONSULTANT is not authorized to undertake any project without a duly executed TO, which shall specify the Services to be performed and the time to be completed. The CONSULTANT acknowledges that the COUNTY may employ several different consultants to perform the same or similar Services for the COUNTY and that the CONSULTANT has not been employed as the exclusive agent to perform any such Services.
- 2.3. When the CONSULTANT and the COUNTY enter into a TO where the term of the TO expires on a date that is later than the date of this Agreement, the CONSULTANT and the COUNTY agree that the terms of this Agreement and any amendments, attachments, or provisions thereof are automatically extended until the expiration or full completion of the requirement of the TO.

### **3. Compensation**

#### **3.1. General**

- 3.1.1. The COUNTY shall pay the CONSULTANT in accordance with "Exhibit B, Fee Schedule," which is attached hereto and made a part of this Agreement. The Fee Schedule identifies all job classifications, which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of Services by personnel in job classifications not listed on the Fee Schedule may result in non-payment for such services.
- 3.1.2. The Fee Schedule, as set out in Exhibit B may be adjusted by an amendment to this Agreement, after mutual written agreement of the parties, annually beginning one (1) year from the Effective Date of this Agreement. Such amendment shall operate prospectively only and shall not alter fee schedules for TO's in effect at the time of the amendment.
- 3.1.3. Compensation may be negotiated as a "Not-To Exceed" or "Lump-Sum" price on each individual TO.
- 3.1.4. Invoices must reference the applicable TO Number, using an invoice form approved by the County.
- 3.1.5. All of the CONSULTANT invoices, other than those for "Lump-Sum" projects, shall be accompanied by time and task records for all billable hours appearing on the invoice. Additional supporting documents may be requested by the COUNTY and, if so requested, shall be furnished by the CONSULTANT to the County Auditor's satisfaction. These include but are not limited to reimbursable expenses as outlined in Section 3.2 of this Agreement.
- 3.1.6. All of the CONSULTANT invoices for "Lump-Sum" projects shall be accompanied by the schedule of deliverables with associated milestones. Invoices for payment should be submitted as each milestone is complete. Additional supporting documents may be requested by the COUNTY and, if so requested, shall be furnished by the CONSULTANT to the County's satisfaction. These include but are not limited to reimbursable expenses as outlined in Section 3.2 of this agreement.

- 3.1.7. The CONSULTANT'S Project Manager or other authorized officer shall, by affidavit, attest to the correctness and accuracy of all charges and requested reimbursements.
- 3.1.8. Any invoice submitted that does not satisfy the criteria as outlined herein will be returned to the CONSULTANT until correct.
- 3.1.9. Each individual invoice shall be due and payable forty-five (45) days after the date the COUNTY receives a correct, fully documented, invoice in form and substance satisfactory to the COUNTY with all appropriate cost substantiations attached. All invoices shall be delivered to:

Columbia County  
P.O. Box 1529, Lake City, FL 32056  
Attn: Chad Williams, County Engineer  
Phone: 386-758-1019  
Email: chad\_williams@columbiacountyfla.com

- 3.1.10. In order to enable both parties to close their books on a project, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT'S final/last billing for the services rendered to the COUNTY for each project. The CONSULTANT'S submission of a Final Invoice for a project is its certification that all its services have been properly performed and all charges and costs have been invoiced to the COUNTY. Upon receipt of the Final Invoice, the account for such project will be closed, and the CONSULTANT shall be deemed to have waived any further charges not properly included on the Final Invoice.
- 3.1.11. Payment of the Final Invoice by the COUNTY shall not constitute evidence of the COUNTY'S acceptance of the CONSULTANT'S performances of the Services.
- 3.1.12. The parties acknowledge that intentional misrepresentations of billable hours and reimbursable expenses will be criminally prosecuted to the fullest extent of the law.

### 3.2. Reimbursable Expenses

- 3.2.1. All of the CONSULTANT'S requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Agreement shall be reimbursed per the Reimbursable Cost Schedule that is attached hereto as Exhibit "C" and made a part of this Agreement "Reimbursable Expenses" are the actual, pre-approved expenses incurred directly in connection with the applicable TO the COUNTY has issued the CONSULTANT. Reimbursable Expenses will be reimbursed by the County at cost, but not to exceed the amounts listed, as applicable, on Exhibit "C". The CONSULTANT'S requests for payment shall include copies of paid receipts, invoices or other documentation acceptable to the COUNTY.
- 3.2.2. All assets (i.e. durable goods, equipment, etc.) purchased as part of the Reimbursable Expenses become the property of the COUNTY. The CONSULTANT shall maintain a running current inventory of all such assets during the rendering of Services and all such assets shall be turned over to the COUNTY upon completion of the project or termination of this Agreement.

#### 4. Insurance

##### 4.1. General Provisions

- 4.1.1. The CONSULTANT shall maintain at all times the following minimum levels of insurance and shall, without in any way altering its liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below and provide the COUNTY with a certified Certificate of Insurance evidencing the same before any services commence. A certified copy of each policy applicable to this Agreement shall thereafter be provided on annual basis to the COUNTY to evidence such coverage before any service commences for the next annual period of this agreement. Such certificates will provide that there shall be no termination, non-renewal, modification, or expiration of such coverage without thirty (30) day prior written notice to the COUNTY.
  - 4.1.2. The COUNTY shall be named as an additional insured on all CONSULTANT policies related to this Agreement, excluding professional liability and worker's compensation.
  - 4.1.3. The CONSULTANT'S self-insured retention or deductible per line of coverage shall not exceed \$5,000.00 without the written permission of the COUNTY.
  - 4.1.4. Upon any failure by the CONSULTANT to comply with the provisions of this Article 4.0, the COUNTY may, at its sole option, upon five (5) days' notice to the CONSULTANT, suspend the CONSULTANT from work on any and all Services for cause until there is full compliance. Failure to comply within fifteen (15) days after notice shall automatically terminate the agreement.
  - 4.1.5. Termination of the agreement shall not relieve the CONSULTANT from the obligation to obtain and maintain such insurance amount and coverages or limit CONSULTANT'S liability for lack thereof.
  - 4.1.6. All CONSULTANT'S sub-consultants shall be required to include the COUNTY and the CONSULTANT as additional insured on their General Liability Insurance policies.
  - 4.1.7. All sub-consultants used by the CONSULTANT shall comply with and have the required Insurance policy(ies) in force, or if any such insurance policy does not meet the required insurance limits, then the CONSULTANT shall indemnify and hold harmless the COUNTY for any claim in excess of the sub-consultants' insurance coverage.
  - 4.1.8. The sub-consultants shall not commence Services under this Agreement until all insurance required as stated herein has been obtained and the COUNTY has approved all such insurance.
- 4.2. Comprehensive Automobile Liability Insurance. CONSULTANT shall maintain One Million Dollars (\$1,000,000.00) combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.
- 4.3. Commercial General Liability. CONSULTANT shall maintain One Million Dollars (\$1,000,000.00) combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

- 4.4. Professional Liability Insurance. CONSULTANT shall maintain Two Million Dollars (\$2,000,000.00) for design errors and omissions inclusive of defense costs. The CONSULTANT shall be required to provide continuing Professional Liability Insurance to cover all Services provided for this Agreement for a period of two (2) years after this Agreement is completed. Notwithstanding the foregoing requirement, the insurance requirements may vary depending on the Services the CONSULTANT will provide for each project as determined by the County Administrator. Accordingly, the COUNTY may from time to time require the CONSULTANT to provide a higher level of coverage for certain Services provided in support of a specific TO for certain projects and time periods.
- 4.5. Performance, Payment and Other Bonds. The CONSULTANT shall furnish Performance and Payment Bonds specific to each TO, if and as required under the TO issued.
- 4.6. Workers Compensation. The CONSULTANT shall provide, pay for, and maintain workers compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

## **5. Standard of Care**

- 5.1. The CONSULTANT represents to the COUNTY that it has the personnel and experience necessary to perform all Services in a professional and workmanlike manner and specifically warrants that all Services shall be performed by skilled and competent personnel to the professional standards in the field.
- 5.2. The CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as provided by a professional of like experience, knowledge and resources, under similar circumstances.
- 5.3. The CONSULTANT shall ensure, to the greatest extent practical, that all design, bid, and construction documents produced by the CONSULTANT and their sub-consultants for the COUNTY will be consistent with Federal, State, District and County requirements.
- 5.4. Construction phase services provided by the CONSULTANT shall include those services required to fulfill the role of the Professional as defined in the COUNTY'S General Conditions for construction contracts.
- 5.5. The CONSULTANT agrees that, in the event that design errors end/or omissions are discovered during construction, all services rendered by the CONSULTANT to correct said design errors end/or omissions will be considered out-of-scope services and shall not be invoiced to the COUNTY.
- 5.6. The CONSULTANT shall, at no additional cost to the COUNTY, re-perform all those Services which fail to satisfy the foregoing standard of care or which otherwise fail to meet the requirements of this Agreement.

## **6. Indemnification**

- 6.1. General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the COUNTY and the CONSULTANT agree to allocate such liabilities in accordance with this Section.

## 6.2. Indemnification.

6.2.1. The CONSULTANT, to the greatest extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the COUNTY) protect and hold the COUNTY, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses and expenses whatsoever (including, without limitation, attorneys' fees and costs during negotiation, through litigation and all appeals therefrom), pertaining to the death of or injury to any person or damage to any property arising out of or resulting from (i) the failure of the CONSULTANT to comply with applicable laws, rules or regulations, (ii) the breach by the CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the CONSULTANT'S performance of this Agreement, or (iv) any actual or alleged act, errors or omissions, or intentional or willful misconduct, of the CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that the CONSULTANT shall not be obligated to defend or indemnify the COUNTY with respect to any such claims or damages arising out of the COUNTY'S negligence.

6.2.2. The COUNTY'S review, comment and observation of the CONSULTANT'S service and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

6.2.3. The CONSULTANT agrees that it shall bear sole legal responsibility for (i) its services and product; (ii) the services and products of all its sub-consultants and their employees; and (iii) the CONSULTANT and each sub-consultant's performance or non-performance of the Services required to be performed in accordance with this Agreement and all TO's.

6.3. Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Agreement will survive as if this Agreement were in full force and effect.

## 7. Independent Contractor

7.1. The CONSULTANT undertakes performance of the Services as an independent contractor and will be wholly responsible for the methods and manner of performance.

7.2. The COUNTY shall have no right to supervise the methods the CONSULTANT uses to perform the Services, but the COUNTY shall have the right to observe the CONSULTANT'S performance.

7.3. The CONSULTANT shall work closely with the COUNTY in performing Services under this Agreement.

7.4. The CONSULTANT shall not pledge the COUNTY'S credit or make the COUNTY a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONSULTANT shall have no right to speak for or bind the COUNTY in any manner.

## **8. Consultant Representations**

8.1. The CONSULTANT hereby represents and warrants the following to the COUNTY:

- 8.1.1. The CONSULTANT is a corporation duly organized and existing in good standing under the laws of the State of Florida with full right and authority to do business within the State of Florida.
- 8.1.2. The CONSULTANT has the full right and authority to enter into this Agreement and to perform its obligations in accordance with its terms.
- 8.1.3. The CONSULTANT now has and will continue to maintain all licenses and approvals required conducting its business, and that it will at all times conduct its business activities in a reputable manner.
- 8.1.4. The CONSULTANT has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 8.1.5. The CONSULTANT has the personnel and experience necessary to perform all Services in a professional and workmanlike manner.
- 8.1.6. The CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as provided by a professional of like kind experience, knowledge and resources under similar circumstances.
- 8.1.7. The CONSULTANT shall, at no additional cost to the COUNTY, re-perform those Services which fail to satisfy the foregoing standard of care, the requirements and standards of this Agreement or which otherwise fail to meet the requirements of this Agreement.
- 8.1.8. Each individual executing this Agreement on behalf of the CONSULTANT is authorized to do so.

## **9. Compliance with Laws**

- 9.1. In performance of the Services, the CONSULTANT agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, worker's compensation, equal employment and safety. If CONSULTANT observes that the Contract Documents are at variance therewith, it shall promptly notify County in writing. Compliance with the above laws shall include but is not limited to: (1) the Occupational Safety and Health Act, 29 CFR 1910 and 1926, respectively, General Industry Standards and Construction Industry Standards, including regulations regarding Trenching and Shoring; (2) the Florida Workers' Compensation Law, Chapter 440, Florida Statutes; (3) Rules 38F and 38I, Florida Administrative Code; and (4) Florida Department of Transportation Manual of Traffic Control and Safe Practices.
- 9.2. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY): accordance with State of Florida, Office of the Governor, Executive Order 11-116 (superseding Executive Order 11-02; Verification of Employment Status), in the event performance of this Agreement is or will be funded using state or federal funds, the CONSULTANT must comply with the Employment Eligibility Verification Program ("E-Verify Program") developed by the federal government to verify the eligibility of individuals to work in the United States and 48 CFR 52.222-54 (as amended) is incorporated herein by reference. If applicable, in

accordance with Subpart 22.18 of the Federal Acquisition Register, the CONSULTANT must (1) enroll in the E-Verify Program, (2) use E-Verify to verify the employment eligibility of all new hires working in the United States, except if the CONSULTANT is a state or local government, the CONSULTANT may choose to verify only new hires assigned to the Agreement; (3) use E-Verify to verify the employment eligibility of all employees assigned to the Agreement; and (4) include these requirement in certain subcontracts, such as construction. Information on registration for and use of the E-Verify Program can be obtained via the internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

#### **10. Sub-consultants**

- 10.1. The COUNTY reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and to inspect all facilities of any sub-consultant.
- 10.2. If a sub-consultant fails to perform or make progress in providing any of the Services, as required by this Agreement, and the CONSULTANT determines it necessary to replace the sub-consultant to complete any services in a timely fashion, then the CONSULTANT shall promptly do so, subject to the COUNTY'S right to approve the new sub-consultant. The failure of a sub-consultant to timely perform any of its obligations to the CONSULTANT shall not relieve the CONSULTANT of its obligations to the COUNTY under this Agreement or under any TO.

#### **11. Federal and State Taxes**

- 11.1. The COUNTY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the COUNTY will provide an exemption certificate to the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the COUNTY, nor shall the CONSULTANT be authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

#### **12. Public Entity Crimes**

- 12.1. The CONSULTANT understands and acknowledges that this Agreement will be void in the event the conditions stated in Section 287.133, Florida Statutes, relating to conviction for a public entity crime apply to the CONSULTANT.

#### **13. COUNTY'S Responsibilities**

- 13.1. The COUNTY shall be responsible for providing access to all COUNTY project sites and providing information in the COUNTY'S possession that the CONSULTANT may reasonably require to perform the Services including existing reports, studies, financial information, and other relevant data that are available in the files of the COUNTY.

#### **14. Termination of Agreement**

- 14.1. The COUNTY may terminate this Agreement, in whole or in part, at any time, either due to the failure of the CONSULTANT to fulfill its obligations under this Agreement (subject to the cure period set forth in Section 35), or for the COUNTY'S convenience. The COUNTY shall deliver written notice of such termination to the CONSULTANT, and upon receipt thereof, the CONSULTANT shall:



- 14.1.1. Immediately discontinue all affected Services unless the notice directs otherwise; and
- 14.1.2. Deliver to the COUNTY all data, reports, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by the CONSULTANT in performing this Agreement, whether completed or in process.
- 14.2. Unless in dispute or subject to the COUNTY'S right of set-off or other remedy, the CONSULTANT shall be paid for Services actually rendered through the date of termination.
- 14.3. The rights and remedies of the COUNTY provided for in this Section 14 are in addition and supplemental to any and all other rights and remedies provided bylaw or under this Agreement.

## **15. Force Majeure**

- 15.1. The CONSULTANT shall be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its non-performance. An "Event of Force Majeure" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. Such includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Within five (5) days after the occurrence of an Event of Force Majeure, the CONSULTANT shall deliver written notice to the COUNTY describing the event in reasonably sufficient detail and how the event has precluded the CONSULTANT from performing its obligations hereunder. The CONSULTANT'S obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the CONSULTANT to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the CONSULTANT shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period the CONSULTANT shall keep the COUNTY duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

## **16. Governing Law and Venue**

- 16.1. This Agreement shall be governed in all respects by the laws of the State of Florida. The venue for any litigation with respect to the obligations under this Agreement shall be brought only in the court of appropriate jurisdiction in Columbia County, Florida.

## **17. Non-Discrimination**

- 17.1. The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

## **18. Waiver**

- 18.1. A waiver by either the COUNTY or the CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing.

In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach of this Agreement. The making or acceptance of a payment by either party with the knowledge of the other party's c1 listing default or breach of this Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.

## **19. Severability**

- 19.1. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of this Agreement.
- 19.2. Any void provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void.
- 19.3. The parties further agree to reform this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- 19.4. The provisions of this Section 19 shall not prevent this Agreement from being void should a provision which is of the essence of this Agreement be determined to be void.

## **20. Entirety of Agreement**

- 20.1. The COUNTY and the CONSULTANT agree that this Agreement sets forth the entire Agreement between the parties with respect to its subject matter, and there are no promises or understandings other than those stated herein.
- 20.2. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the COUNTY and the CONSULTANT pertaining to the Services, whether written or oral.

## **21. Modification**

- 21.1. The provisions, terms and conditions stated in this Agreement may not be modified, superseded or otherwise altered unless by a written amendment executed by both the COUNTY and the CONSULTANT.

## **22. Successors and Assigns**

- 22.1. The COUNTY and the CONSULTANT each binds itself and its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.
- 22.2. The CONSULTANT shall not assign this Agreement without the express written approval of the COUNTY, which the COUNTY may unreasonably withhold in its sole discretion.

## **23. Contingent Fees**

- 23.1. The CONSULTANT warrants that (i) it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement; and (ii) it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

## **24. Truth-In-Negotiation Certificate**

- 24.1. The CONSULTANT'S execution of this Agreement serves as its execution of a Truth- in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the effective date of this Agreement.
- 24.2. The COUNTY shall adjust the CONSULTANT'S wage rates and costs if the COUNTY determines that the wage rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Certificate within one (1) year following payment of any such wages or costs to the CONSULTANT.

## **25. Ownership of Documents**

- 25.1. The CONSULTANT shall be required to cooperate with other COUNTY consultants and shall timely provide those consultants any information requested in the specified format. Any and all documents, records, disks, original drawings, or other information shall become the property of the COUNTY for its use and/or distribution as the COUNTY may determine in its sole discretion. The CONSULTANT is not liable for any damages, injury or costs associated with the COUNTY'S use or distribution of these documents for purposes other than those originally intended by the CONSULTANT.

## **26. Assets and Audits**

- 26.1. The CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three (3) years after completion of this Agreement. The COUNTY shall have access to all books, records, and documents that the CONSULTANT must maintain in accordance with this Section 26 for the purpose of inspection or audit during the CONSULTANT'S normal business hours at its usual place of business.
- 26.2. All invoices submitted to the COUNTY pursuant to this Agreement are subject to audit and demand for refund of overpayment for a time period extending three (3) years beyond the expiration or earlier termination of this Agreement.

## **27. Notice**

- 27.1. Any notice, demand, communication, or request that is required to be delivered to a Party hereunder shall be in writing, addressed to the party for whom it is intended, and delivered at the place last specified by such party: (i) in person, (ii) via nationally recognized overnight delivery service, (iii) via Certified United States Mail, postage prepaid with return receipt requested, or (iv) via email, with confirmation from the recipient acknowledging receipt thereof within 72 hours (and if there is no receipt within

such time period, one of the other methods described in this Section 27.1 must be utilized). The parties initially designate the following as their respective places for delivery of notice:

As to County: Columbia County  
P.O. Box 1529, Lake City, FL 32056  
Attn: David Kraus, County Manager  
Phone: 386-758-1178  
Email: david\_kraus@columbiacountyfla.com

As to Consultant: North Florida Professional Services, Inc.  
P.O. Box 3823, Lake City, FL 32056  
Attn: Megan Carter, Administrative Director  
Phone: 386-752-4675  
Email: mcarter@nfps.net

- 27.2. Nothing contained in this Section shall be construed to restrict the transmission of routine communications between representatives of the CONSULTANT and the COUNTY.

## **28. Contract Administration**

- 28.1. The CONSULTANT shall deliver the Services under the general direction of the Columbia County Engineer. The County Engineer shall act as the COUNTY'S representative during the term of this Agreement.

## **29. Key Personnel**

- 29.1. The CONSULTANT shall notify the COUNTY in the event of any key personnel changes, which might affect this Agreement. To the extent possible, notification shall be made at least ten (10) days prior to any proposed changes. The CONSULTANT shall at the COUNTY'S request, remove without consequence to the COUNTY any sub-consultant or employee of the CONSULTANT and replace the same with an appropriate substitute having the required skill and experience necessary to perform the Services in accordance with this Agreement requirements. The COUNTY has the right and discretion to reject proposed changes in key personnel.

## **30. Annual Appropriations**

- 30.1. The CONSULTANT acknowledges that during any fiscal year the COUNTY shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, the COUNTY may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. The COUNTY may enter into agreements whose duration exceeds one (1) year, however, any such agreement shall be executory only for the value of the services to be rendered which the COUNTY agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the COUNTY'S performance and obligation to pay the CONSULTANT under this Agreement is contingent upon an annual appropriation being made for that purpose.

### **31. Liquidated Damages**

- 31.1. The parties acknowledge that it would be difficult or impossible to accurately determine the amount of actual damages the COUNTY would or may incur as a consequence of the CONSULTANT'S failure to meet a deliverable date in a performance schedule as stated in the applicable TO. Accordingly, in lieu of assessing actual damages if the CONSULTANT fails to meet a deliverable date as stated in the applicable TO, the parties confirm that: (i) the assessment of liquidated damages is reasonable and appropriate; (ii) the terms and the amount(s) of the liquidated damages as stated in the applicable TO are reasonable; and (iii) the liquidated damages will be assessed as the COUNTY'S remedy under such circumstances and not as a penalty.

### **32. Limitation of Liability**

- 32.1. IN NO EVENT SHALL THE COUNTY BE LIABLE TO THE CONSULTANT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANYKIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY THE COUNTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

### **33. Default and Remedy**

- 33.1. If the CONSULTANT materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CONSULTANT receives written notice of the default from the COUNTY, then the COUNTY shall have the right to (i) immediately terminate this Agreement by delivering written notice to the CONSULTANT, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the COUNTY materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the COUNTY receives written notice of the default from the CONSULTANT, then the CONSULTANT shall have the right to immediately terminate this Agreement by delivering written notice to the COUNTY. Upon any such termination, the COUNTY shall pay the CONSULTANT the full amount due and owing for all Services performed through the date of Agreement termination.

### **34. Attorneys' Fees and Costs**

- 34.1. In connection with any dispute or any litigation arising out of, or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses, including reasonable attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

### **35. Public Records Law**

- 35.1. The CONSULTANT acknowledges the COUNTY'S obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request. The CONSULTANT acknowledges that the COUNTY is required to comply with Article I, Section 24, of the Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute and constitutional provisions control over the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this agreement on the dates indicated but effective the 2/17/2022.

COUNTY:

COLUMBIA COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

By: [Signature]  
Robby Hollingsworth  
Chairman

Date: 2/17/2022

ATTEST:

By: [Signature]  
James M. Swisher, Jr.  
Clerk

Approved as to form:

By: [Signature]  
Joel Foreman  
County Attorney

CONSULTANT:

NORTH FLORIDA PROFESSIONAL SERVICES, INC.

By: [Signature]  
Megan Carter  
Secretary/Treasurer

Date: 2/21/2022

WITNESS:

By: [Signature]

Print: Debbie A. Notes

## **INTRODUCTION**

North Florida Professional Services (NFPS) is pleased to submit this proposal for providing the engineering, permitting and project management services needed for the paving of roads in the Hi Dri Acres subdivision. The subdivision was recorded as Phase I (1973) and Phase II (1976). Currently the roads are graded dirt roads, within a 60' road R/W. The total length of roads to be paved is approximately 4 miles.

This project is funded by a CDBG-DR grant, administered by the FDEO. The total grant allocation was \$4,762,257.50 NFPS was selected by the County as part of a competitive advertisement that followed CCNA rules.

## **SCOPE OF WORK**

The deliverables that are required under the Engineering Services contract are:

1. Create a full design package(s), signed and sealed by a Professional Engineer (PE) licensed in the State of Florida, including engineering drawings, specifications, construction cost estimate, surveys, and any other reports, documents, or information relevant to this project and meet all local current hurricane code ratings, local codes and building codes
2. Obtain copies of all permit applications, correspondence with permitting agencies, final permits, and any other permit-related documentation for the project.
3. Conduct an Environmental Review/Assessment in accordance with DEO Policies and the National Environmental Policy Act referenced in Attachment D, 4., b. of this agreement.

A detailed description of the anticipated tasks is provided as Appendix A.

## APPENDIX A

### DESIGN TASK DESCRIPTIONS

#### Survey

**Horizontal Project Control** – includes researching datum records and existing maps, collecting field data on existing monumentation and maintained limits, establishing horizontal control points that are referenced to state plane coordinates and establishing a baseline of survey.

**Vertical Project Control** – includes researching vertical datum records and benchmark information and establishing vertical control points that are referenced to NAVD datum.

**Topography / DTM (3D)** – includes the field survey work required to pick up existing topographical features and ground points. Also includes the file processing required to create proper topographic symbology and a digital terrain model of the existing ground surface.

**Underground Utility locates** – includes the analysis of existing information regarding existing utility facilities in the project area, coordination with locate services and field survey work to collect location information on field-located facilities.

**R/W Data** – includes researching existing plats and deeds, the field work to locate existing monumentation.

**Coordination** – communication and action planning with owners, Design staff and stakeholders.

**Survey Office Support and File Processing** - Includes the processing of the raw data files into CADD-compliant topographic drawings and Quality control reviews of the data.

#### Geotechnical Analysis

**Soil Borings** - collect soil borings to check for unsuitable soils and establish resilient modulus values for pavement design purposes.

#### Roadway Analysis

**Design Report** – prepare a Design Report that summarizes the project intent, existing conditions and applicable Design criteria.

**Typical Section analysis and selection** – includes the review of the existing roadway features, operating characteristics, traffic data and functional classification of the roadway. Analysis of this data and an understanding of the projected future use will result in the creation of a proposed Design Speed and Typical Section for the project.



## APPENDIX A

### DESIGN TASK DESCRIPTIONS

**Pavement Design analysis and selection** – includes the collection of traffic loading data (including projected traffic for the design service year) and modulus numbers for the subgrade soils. Using this information, a required structural number will be

established and a pavement design will be prepared in accordance with the *FDOT Flexible Pavement Design Manual*.

**Evaluation of Critical Design Elements** – includes an analysis of the Florida Greenbook criteria for design speed, lane widths, shoulder widths, horizontal alignment, super-elevation, vertical alignment, grade, stopping sight distance, cross slope and clear recovery area. The design criteria for these elements will be established and met if feasible. When constraints prevent the criteria from being met, mitigation features will be utilized and exceptions prepared.

**Evaluation of drainage** – includes the evaluation of existing surface water flow patterns, outfall locations and flooding history. Also includes an evaluation for cross-drain culverts.

**Evaluation of side drains and ditches** – includes the evaluation of existing surface water flow patterns and the need for side drain structures. Existing side drains will be evaluated for condition, horizontal clearance requirements, capacity, and safety treatments for the pipe ends. New side drains will be sized and added as required to maintain lateral flow to established outfall areas.

**Preparation of Design Exceptions** – where any of the critical design elements cannot meet the established design criteria, a design exception will be prepared and approved by the Engineer of Record and the local government's designated authority.

**Horizontal / Vertical Master Design files** – includes efforts required for establishing the master design files for the horizontal and vertical geometry. Includes the work effort to create elements showing the alignment for both horizontal and vertical geometrics in the plan/profile sheets. Includes efforts to create criteria files for auto-labeling. Also, includes all efforts to analyze and refine plan/profile geometrics.

**Cross Section Design Files** – the cross sections will be prepared using a 3D model so hours for that effort are included in the 3D Modeling activity.

**Temporary Traffic Control** – evaluate schemes for lane closures and proper warning signs

**Quantities / Cost Estimates** – includes the calculation of quantities, establishing the appropriate pay items, the analysis of local market conditions in establishing realistic unit prices and an estimate of the total project construction cost. This estimate will be created at the concept stage and will be updated at Phase III plans and at FINAL plans.

## APPENDIX A

### DESIGN TASK DESCRIPTIONS

**Field reviews** – includes field reviews by staff needed to collect information and to meet with utility representatives or local stakeholders.

**Technical Meetings (County, FDOT, Reg. Agencies)** – travel and time spent meeting with County staff, regulatory agencies, emergency responders and other stakeholders.

**QA/QC** – includes continuous quality control checks by front-line supervisors, internal peer review by our senior Engineers and constructability reviews by our senior CEI staff.

**Coordination** – communication and action planning with owners, Design staff and stakeholders.

#### **Roadway Plans Production**

**Key Sheet** – preparation of the key sheet, in general conformance with the FDOT FDM.

**Signature Sheet** – create signature sheet for digitally signing/sealing the plans.

**Typical Sections** – preparation of typical sections, in general conformance with the FDOT FDM.

**Typical Section details** – preparation of any required typical section details, in general conformance with the FDOT FDM.

**General Notes / Pay Item notes** – preparation of the relevant notes and project specific pay instructions, in general conformance with the FDOT FDM.

**Project Layout Sheet** – prepare visual index to where specific roads are located in the plans.

**Plan/Profile sheets** – preparation of the roadway plan sheets, in general conformance with the FDOT FDM

**Special details** – preparation of any necessary special details that clarify instructions to the contractor, in general conformance with the FDOT FDM.

**Cross sections** – preparation of roadway cross sections, in general conformance with the FDOT FDM

**Temporary traffic control plans** – preparation of the temporary traffic control plan for maintenance of traffic during construction, in general conformance with the FDOT FDM.

**Stormwater pollution prevention plans** – preparation of a stormwater pollution prevention plan that follows the requirements of the Florida Erosion and Sediment Control Manual and in general conformance with the FDOT FDM, chapter 251.

**Summary of Quantity Sheets** – create summary boxes of the quantities

**Project Control Sheet** – provides information on horizontal and vertical control points

## APPENDIX A

### DESIGN TASK DESCRIPTIONS

**QA/QC** – includes continuous quality control checks by front-line supervisors, internal peer review by our senior Engineers and constructability reviews by our senior CEI staff.

#### **Drainage Analysis**

**Base Clearance** – identify areas where the normal high water may frequently saturate the subgrade and provide proper clearances with selection of the profile grade.  
Evaluate clearances above the crown of cross drain pipe.

**Design of Cross Drains** – identify natural low areas that collect and convey stormwater runoff. Delineate drainage basins and flow characteristics and size conveyance pipes.  
Design proper safety end treatments for pipe ends.

**Design of Ditches** – evaluate flow capacity, flow patterns, placement and size of side drain pipe and evaluate the need for ditch lining or rubble rip rap.

**Quantities**- prepare estimated pipe lengths, end treatments, sod, rip rap

**Field Reviews** – to gather data on existing runoff conditions, conveyance means and outfall areas

**QA/QC** – frequent quality checks of staff work

#### **Drainage Plans**

**Drainage Structures** – draw cross-sectional view of all drainage structures and label them.

**Erosion Control details** – prepare details for staked silt fence and other sedimentation barriers.

**SWPPP sheets** - prepare the standard Stormwater Pollution Prevention plan sheet

#### **Utility Coordination**

**Identify Existing Utility Owners (UAOs)** – includes calling in a Design Ticket to Sunshine 811 to establish utility owner contact information and to begin coordination of locating existing utilities.

**Initial Utility Coordination and request for mark-ups** – contact each UAO and request that they provide location information on their existing facilities.

**Review Utility Mark-ups** – translate utility location information to the plans and evaluate conflict points.

## APPENDIX A

### DESIGN TASK DESCRIPTIONS

**Utility coordination / follow-up** – includes discussion with utility owners regarding known conflicts and the resolution to those conflicts.

**Coordination** – includes regular communication with UAO's and design staff to ensure that any known utility conflict is addressed and Utility Work Schedules can be secured.

**Utility Work Schedules** – prepare draft Utility Work Schedules for UAO approval and signature.

#### Environmental Permitting

**Preliminary Project Research and Determination of Need** – includes analysis of existing field conditions, establishing wetland lines and potential impacts. Also includes the determination of the type of environmental permits that may be required. It is expected that the SRWMD approval will be limited to the coordination effort needed to secure concurrence on a "dusty roads" exemption and that no retention pond will be required. **It is anticipated that there are wetland impacts that will require 404 wetland impact permitting with the DEP, and there will be substantial coordination effort, expense and time delays associated with it.**

**Establish Wetland lines** – delineation will be done by a certified wetland evaluator under a subcontractor agreement.

**Stage 1 Environmental Impact Assessment** – conduct a Stage 1 environmental impact assessment for contamination, cultural resources, endangered species, and provide notice to adjacent landowners.

**Agency verification of Wetland lines** – participate in a joint field meeting with DEP and SRWMD to agree on wetland delineation and WOTUS determination.

**Environmental Permit Applications** – prepare and submit an exemption concurrence to WMD and 404 permit application to DEP. This includes dredge and fill sketches, location maps, historical aerials, lidar contours of the basin.

**Prepare UMAM scores** – UMAM scoring will be done by a certified wetland specialist under a subcontractor agreement.

**Compensatory Mitigation Plan** – it is anticipated that DEP will require mitigation for minor wetland impacts. A mitigation plan will be proposed that will utilize County credits at Bayfield mitigation bank.

**Mitigation Coordination and meetings** – lots of coordination with DEP, the County, Bayfield representatives.

## APPENDIX A

### DESIGN TASK DESCRIPTIONS

**Coordination** – includes regular communication with regulatory staff regarding permitting, during pre-application meetings and the various stages of permit review.

#### **Signing and Pavement Marking Analysis**

**Sign inventory and analysis** – includes a field analysis of the need for signs on the project, based on current standards and proposed geometrics.

**No Passing Zone analysis** – evaluate the need for no passing zones based on the MUTCD.

**Signing and Pavement Marking Master Design File** – develop master design file showing all pavement markings.

**Quantities / Cost estimates** – includes the calculation of quantities, the analysis of local market conditions in establishing realistic unit prices and an estimate of the total project construction cost. This estimate will be created at the concept stage and will be updated at Phase II plans and at final plans.

**QA/QC** – daily oversight of criteria application, calculations, quantities

**Coordination** – communication and action planning with owners, Design staff and stakeholders.

#### **Signing and Pavement Marking Plans Production**

**Key sheet** – preparation of the key sheet, in general conformance with the FDOT FDM.

**Signature Sheet** -

**Summary of Pay Items** – preparation of the key sheet, in general conformance with the FDOT FDM.

**General notes / Pay Item notes** – preparation of the key sheet, in general conformance with the FDOT FDM.

**Plan sheets** – preparation of the key sheet, in general conformance with the FDOT FDM and select FDOT Design Standards.

**Special details** – preparation of the key sheet, in general conformance with the FDOT FDM and select FDOT Design Standards.

**QA/QC** – includes continuous quality control checks by front-line supervisors, internal peer review by our senior Engineers and constructability reviews by our senior CEI staff.

## APPENDIX A

### DESIGN TASK DESCRIPTIONS

#### **General Tasks**

**Invoice documentation** – includes the preparation and submission of the required forms and documents to justify invoices.

**Progress Reports** – includes the preparation and submission of progress reports to FDEO and to the County.

**Reimbursement support** – includes support to County staff to help secure reimbursement from FDOT for invoice payments.

**Contract Maintenance and Project Documentation** – includes project management efforts to set up and maintain files, electronic folders and documents, submittal of project documentation.

**Project Manager meetings**

**Draft Bid package preparation**

**Prepare Notice to Contractors and Project Advertisement**

**Pre-bid conference – IF REQUIRED**

**Receive/answer bidders' questions**

**Prepare and issue written addenda**

**Review bids received**

**Award recommendation**

**Post Design Services:**

Provide support to CEI staff – includes being responsive to contractors' questions and providing technical support during construction.

Prepare revisions as necessary – includes the preparation of any required plans revisions after the letting of the project.

Shop drawing review

### **Exhibit B – Fee Schedule**

The proposed fee for this Agreement shall be a lump sum amount as described below and shall be invoiced monthly based on a percentage completion basis.

Based on the understanding of the work activities described herein, our fee for design, permitting and project management for the execution of this design services contract is broken down as follows:

Project General and Common Tasks	\$16,820
Roadway Analysis	\$39,105
Roadway Plans	\$42,880
Drainage Analysis and flooding eval	\$21,340
Drainage plans	\$16,380
Utility Coordination	\$9,100
Environmental Permits (WMD and DEP)	\$29,030
Stage 1 Environmental Impact Assess	\$18,400
Signing and pav't marking analysis	\$19,045
Signing and pav't marking plans	\$17,054
Surveying (field work and processing)	\$39,300
3D modeling	\$26,850
Subconsultant for geotech	\$12,000
<u>Subconsultant for wetland issues</u>	<u>\$37,000</u>

**TOTAL FEE is \$344,304**

### **Exhibit C – Reimbursable Expenses**

Reimbursable expenses are not anticipated for this project and if should such "out-of-pocket" expenses arise during the course of the project, CONSULTANT shall request prior written approval from the COUNTY for actual expenditures. Such expenditures shall be documented in accordance with the terms outlined in Section 3.2.1 of this agreement.