

AGREEMENT FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES - CITYWIDE

THIS AGREEMENT FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES - CITYWIDE ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **TILLMAN AND ASSOCIATES ENGINEERING, LLC** a limited liability company duly organized and authorized to do business in the state of Florida (EIN# 20-3832004) ("Tillman") or ("Consultant").

RECITALS:

WHEREAS, the City has a need for professional engineering services to be performed citywide on a continuing and as needed basis; and

WHEREAS, on May 19, 2020, City issued a Request for Proposals ("RFP") for the procurement of various professional engineering services from qualified firms on a continuing and as needed basis, RFP No.: ENG/190603 (the "Solicitation"); and

WHEREAS, Tillman and Associates Engineering, LLC submitted a proposal and was selected as a finalist and awardee for the provision of professional engineering services for the workgroups set forth in **Exhibit B – Awarded Work Groups**; and

WHEREAS, the City desires to contract with Tillman for the provision of professional engineering services upon the terms and conditions set forth herein and Tillman desires to perform such services upon said terms and conditions and based upon its qualifications package attached hereto as **Exhibit C – Consultant Proposal**; and

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Consultant agree as follows:

TERMS OF AGREEMENT:

1. **RECITALS.** City and Consultant hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The documents comprising the entire understanding between City and Consultant shall include only: (a) this Agreement; (b) those documents listed in this section as Exhibits to this Agreement; (c) the City's Solicitation for the Project and the proposal submitted by Consultant in response thereto (the "Solicitation Documents"); (d) those documents identified in the Project Specifications section of this Agreement, if any; and (e) the task work orders issued for individual projects pursuant to this Agreement (collectively the "Contract Documents"). The Contract Documents are incorporated herein by reference for all purposes. Any conflict between the terms of this Agreement and the Contract Documents shall be construed in favor of this Agreement and the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.
 - A. **Exhibits to Agreement.** The Exhibits to this Agreement are as follows:

Exhibit A:	Consultant Loaded Rate Sheet (A-1)
Exhibit B:	Awarded Work Groups (C-1)
Exhibit C:	Consultant Proposal (C-1)
3. **SCOPE OF SERVICES.** Consultant agrees to perform professional engineering services for City on an as needed basis based on task work orders mutually negotiated by and between the City and Consultant for various individual City projects. Consultant shall provide all labor, materials, permits, equipment, transportation and supervision necessary for the provision of professional engineering services to the City under this Agreement unless otherwise agreed to in writing by City.

- A. The scope of work to be performed by Consultant pursuant to task work orders issued under this Agreement may consist of, but will not necessarily be limited to, providing general and customary engineering services for City projects for studies, design, plans production, construction management, development plan review, and other miscellaneous engineering projects.
 - B. Task work orders shall, by mutual agreement of the parties, set forth the: (1) scope of services for the individual project; (2) time for performance; (3) method and amount of compensation; (4) items to be provided to the City (the "Deliverables"); (5) material information regarding the services; (6) data that must be provided by the City to Consultant; and (6) name and contact information for the City's Project Manager for the individual project.
 - C. City does not guarantee, warrant, or represent that any certain number of projects or any particular type of project will be assigned to Consultant under the terms of this Agreement.
 - D. The purpose of this Agreement is not to authorize a specific project, but rather to set forth certain duties, obligations, rights, and responsibilities that may be incorporated by reference into any subsequently issued task work order mutually agreed to by City and Consultant.
 - E. City shall have no obligation to reimburse Consultant for services rendered outside of the scope of any task work order unless and until City has given written approval of the work and the reimbursement.
 - F. City shall have the sole discretion to select the projects, if any, that may be given to the Consultant.
 - G. City reserves the right to approve or disapprove the use of any subconsultant for its projects.
 - H. Consultant shall perform all Services in accordance with the terms and conditions of this Contract and with any and all applicable regulations and requirements of all interested governmental agencies.
 - I. Consultant shall utilize sufficient qualified personnel acceptable to the City to perform any and all services under this Agreement and any task work order issued hereunder. Consultant shall promptly remove any person from performing services as the City may request in writing and promptly replace such person with a person who shall be approved in writing by the City. Consultant agrees to include a similar provision in tis agreements with any and all subconsultants.
 - J. **Standard of Care.** Consultant shall perform all Services in a timely, efficient, and cost-effective manner and in a manner that comports with the standards of professional engineering services ordinarily exercised by reputable members of Consultant's profession. Consultant shall re-perform any services which fail to satisfy the foregoing standard of care at no additional cost to City. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.
4. **CONTRACT TERM.** The term of this Agreement shall commence and continue in full force for a period of **FIVE (5) YEARS** beginning on **OCTOBER 1, 2020** and ending on **SEPTEMBER 30, 2025** (the "Initial Term"). This Agreement may be renewed for no more than **TWO (2)** consecutive **ONE (1) YEAR** terms upon the mutual written consent of both parties, unless terminated earlier by either party pursuant to the terms of this Agreement.
5. **COMPENSATION.** City shall compensate the Consultant an amount not to exceed **ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000)** (the "Maximum Limiting Amount") during the Initial Term, inclusive of any and all direct costs, indirect costs, and reimbursable expenses, in accordance with the pricing reflected in **Exhibit A – Consultant Loaded Rate Sheet** and the terms of this Agreement. The maximum limiting amount established

under this Agreement shall not be exceeded without the City's express written approval verified by amendment or change order to this Agreement.

- A. It is expressly understood that Consultant is not entitled to the total amount of Compensation referenced above. Rather, Compensation shall be based on satisfactory completion and delivery of all work product and deliverables identified in the scope of work for each individual task work order up to the maximum limiting amount established herein.
- B. For services rendered by Consultant pursuant to individual task work orders issued under this Agreement, City shall pay Consultant in accordance with the amounts set forth in **Exhibit A – Consultant Loaded Rate Sheet**.
- C. Compensation due may be calculated as (1) a lump sum amount; or (2) a guaranteed maximum price based on per diem or hourly rates set forth in **Exhibit A – Consultant Loaded Rate Sheet**, which shall not be exceeded unless agreed to in a writing executed by both parties.
- D. Consultant shall submit invoices on a monthly basis to the City Project Manager identified on the related task work order for those services satisfactorily performed and materials satisfactorily delivered. By submitting its invoice, Consultant certifies to City that: (1) Consultant has billed City for all services rendered by it and any of its consultants or subconsultants through the date of the invoice; (2) any reimbursable expenses present on the face of the invoice, if allowed, have been reasonably incurred by Consultant; and (3) the amount requested by Consultant is currently due and owing.
- E. Consultant invoices shall be sufficiently detailed and adequately describe the work accomplished in accordance with the related task work order. All invoices, reports, and other documentation submitted by Consultant shall include the City Contract Number, invoice date, and an assigned invoice number. City reserves the right to request additional documentation to support the charges reflected. All completed tasks must be approved and agreed upon by the City Project Manager before payment will be authorized.
- F. **Prompt Payment.** Monthly actual payment reporting requirements for prime consultants and subconsultants are based on prompt payment rules and laws. The same holds true for return of retainage after the subcontractor has completed its work, not when the overall project is finished. Florida law requires timely payment for both construction and non-construction services. Generally, invoices for construction contracts must be paid within **TWENTY-FIVE (25) DAYS** of receipt. Invoices for consultant contracts are payable per the terms of this Agreement, but shall not exceed federal regulations as set forth in 49 CFR Part 26, specifically section 26.29, requiring payment of all subcontractors for satisfactory performance within **THIRTY (30) DAYS** of payment to the Prime.
- G. **Excess Funds.** If due to mistake or any other reason Consultant receives payment under this Agreement in excess of what is invoiced and/or provided for under the terms of this Agreement or any related task work order, Consultant shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30) DAYS** of Consultant's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgment at the highest rate allowed by law.
- H. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Consultant shall not be exempted from paying sales tax to its suppliers for services or material required to fulfill Consultant's contractual obligations with

the City, nor will Consultant be authorized to use City's Tax Exemption Number for securing materials listed herein

6. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party (each a "Force Majeure" event). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.
 - A. The party affected by a force majeure event shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof as soon as it becomes aware.
 - B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications to the terms of this Agreement and/or any related task work order that may be necessary or appropriate in order to arrive at an equitable solution.
 - C. Consultant performance shall be extended for a number of days equal to the duration of the force majeure event. Consultant shall be entitled to an extension of time only and, in no event, shall Consultant be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.
7. **TERMINATION.** This Agreement may be terminated by either party for cause upon City or Consultant providing written notice to the defaulting party not less than **THIRTY (30) DAYS** prior to the date of termination in the manner specified for the giving of Notices herein. Any such termination shall not affect the rights or obligations accruing to either party under any previously issued and approved Task Work Order.
 - A. **Consultant's Opportunity to Cure Default.** City may, in its sole discretion, provide Consultant with an opportunity to cure the violations set forth in City's notice of default to Consultant. Consultant shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Consultant to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.
 - B. **City's Remedies Upon Consultant Default.** In the event of Consultant default under this Agreement City shall have the right, at City's option, to pursue any and all remedies available at law or equity, including, without limitation, the right to:
 - (1) terminate this Agreement without further notice;
 - (2) hire another consultant to complete the required work in accordance with the needs of City;
 - (3) recover from Consultant all damages, costs, and attorneys' fees arising from Consultant's default prior to termination; and
 - (4) recover from Consultant any actual excess costs by: (i) deduction from any unpaid balances owed to Consultant; or (ii) any other remedy as provided by law.
 - C. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. Upon receipt of the City's Notice of Termination, Consultant shall immediately discontinue all work as directed in the Notice, provide notice to all subconsultants of the effective date of the

- termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Consultant shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Consultant as permitted under this Agreement and approved by City.
- D. **Delivery of Materials Upon Termination.** In the event of termination of this Agreement (or any task work order issued hereunder), for any reason prior to Consultant's satisfactory completion of all services, Consultant agrees to promptly provide to City, at no additional cost or expense, one (1) copy of any and all of the following items which may have been produced or created prior to and including the date of termination to City: data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and any other information, instrument, or materials (whether or not completed) that were generated or prepared by Consultant in rendering the Services described herein and not previously furnished to City by Consultant pursuant to this Agreement or associated task work order.
8. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Consultant's performance. Any such evaluation will become public record.
9. **CONTRACT FULFILLMENT.** Consultants who enter into any agreement with the City of Ocala and fail to complete the contract term, for any reason, may be subject to future bidding suspension for **ONE (1) YEAR**, and up to a possible **THREE (3) YEAR** bid debarment for serious contract failures.
10. **COMMERCIAL AUTO LIABILITY INSURANCE.** Consultant shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement a policy of commercial auto liability insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage arising out of Consultant's operations and covering all owned, hired, scheduled, and non-owned automobiles utilized in said operations. If Consultant does not own vehicles, Consultant shall maintain coverage for hired and non-owned automobile liability, which may be satisfied by way of endorsement to Consultant's Commercial General Liability policy or separate Commercial Automobile Liability policy.
11. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Consultant shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement a policy of commercial general liability insurance with limits not less than:
- A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate (or project aggregate, if a construction project) for bodily injury, property damage, and personal and advertising injury;
 - B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate (or project aggregate, if a construction project) for products and completed operations;
 - C. Policy must include coverage for contractual liability and independent contractors;
 - D. The City, a Florida municipal corporation, and its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liabilities arising out of activities performed by or on behalf of Consultant. This coverage shall contain no special limitation on the scope of protection to be afforded to the City, its officials, employees, and volunteers.

12. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE.** Consultant shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement adequate workers' compensation and employer's liability insurance covering all of its employees in at least such amounts as required by Chapter 440, Florida Statutes, and all other state and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable. Consultant shall similarly require any and all of its subcontractors to afford such coverage for all of its employees as required by applicable law. Consultant shall waive and shall ensure that Consultant's insurance carrier waives, all subrogation rights against the City of Ocala and its officers, employees, and volunteers for all losses or damages. Consultant's policy shall be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or its equivalent. **Exceptions and exemptions to this Section may be allowed at the discretion of the City's Risk Manager on a case-by-case basis in accordance with Florida Statutes and shall be evidenced by a separate waiver.**
13. **PROFESSIONAL LIABILITY AND/OR ERRORS AND OMISSIONS INSURANCE COVERAGE.** Consultant shall procure, maintain, and keep in full force, effect, and good standing - until the third anniversary of the expiration of this Agreement or the third anniversary of acceptance of work by City - professional liability or errors and omissions insurance coverage for wrongful acts in an amount not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate, exclusive of defense costs. It is recognized that this type of insurance is only available on a claims-made basis and additional insured endorsements are not available.
14. **MISCELLANEOUS INSURANCE PROVISIONS.**
- A. Consultant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by Consultant shall not be interpreted as limiting Consultant's liability or obligations under this Agreement. City does not in any way represent that these types or amounts of insurance are sufficient or adequate enough to protect Consultant's interests or liabilities or to protect Consultant from claims that may arise out of or result from the negligent acts, errors, or omissions of Consultant, any of its agents or subconsultants, or for anyone whose negligent act(s) Consultant may be liable.
 - B. No insurance shall be provided by the City for Consultant under this Agreement and Consultant shall be fully and solely responsible for any costs or expenses incurred as a result of a coverage deductible, co-insurance penalty, or self-insured retention to include any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation.
 - C. Certificates of Insurance. No work shall be commenced by Consultant under this Agreement until the required Certificate of Insurance and endorsements have been provided nor shall Consultant allow any subconsultant to commence work until all similarly required certificates and endorsements of the subconsultant have also been provided. Work shall not continue after expiration (or cancellation) of the Certificate of Insurance and work shall not resume until a new Certificate of Insurance has been provided. **Consultant shall provide evidence of insurance in the form of a valid Certificate of Insurance (binders are unacceptable) prior to the start of work contemplated under this Agreement to: City of Ocala. Attention: Procurement & Contracting Department, Address: 110 SE Watula Avenue, Third Floor, Ocala Florida 34471, E-Mail: vendors@ocalafl.org.** Consultant's Certificate of Insurance and required endorsements shall be issued by an agency authorized to do business in the State of Florida with an A.M. Best Rating of A or better. The Certificate of Insurance shall indicate whether coverage is being provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of

- Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- D. City as an Additional Insured. The City of Ocala shall be named as an Additional Insured and Certificate Holder on all liability policies identified in this Section with the exception of Workers' Compensation and Professional Liability policies.
 - E. Notice of Cancellation of Insurance. Consultant's Certificate of Insurance shall provide **THIRTY (30) DAY** notice of cancellation, **TEN (10) DAY** notice if cancellation is for non-payment of premium. In the event that Consultant's insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Consultant to provide the proper notice. Such notification shall be in writing by registered mail, return receipt requested, and addressed to the certificate holder. Additional copies may be sent to the City of Ocala at vendors@ocalafl.org.
 - F. Certificates of Insurance, accompanied by copies of all endorsements required by this section, that are issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating* of at least an A, showing the "City of Ocala, 110 SE Watula Avenue, Ocala, FL 34471" as an additional insured and certificate holder for General Liability and Commercial Automobile Liability insurance. Original and renewal certificates must be forwarded to the **City of Ocala Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471, E-Mail: vendors@ocalafl.org** prior to the policy expiration.
 - G. Failure to Maintain Coverage. The insurance policies and coverages set forth above are required and providing proof of and maintaining insurance of the types and with such terms and limits set forth above is a material obligation of Consultant. Consultant's failure to obtain or maintain in full force and effect any insurance coverage required under this Agreement shall constitute material breach of this Agreement.
 - H. Severability of Interests. Consultant shall arrange for its liability insurance to include, or be endorsed to include, a severability of interests/cross-liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.
16. **NO EXCLUSIVITY**. It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Consultant or as prohibiting the City from acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
17. **PUBLIC RECORDS**. The Consultant shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, the Consultant shall:
- A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Consultant or keep and maintain public records required by the public agency to perform the service. If the Consultant transfers all public records to the public agency upon completion of the contract, the Consultant shall destroy any duplicate public

records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

- E. A contractor who fails to provide public records to City within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK, 110 SE WATULA AVENUE, OCALA FLORIDA 34471; TELEPHONE: 352-629-8266; E-MAIL: clerk@ocalafl.org.

17. **AUDIT.** Consultant agrees to maintain such financial and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. Consultant shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
18. **PUBLICITY.** Consultant shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
19. **PUBLIC ENTITY CRIMES.** As provided in Section 287.133(2)(a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or Consultant 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, for CATEGORY TWO, for a period of 36 months from the date of being placed on the convicted vendor list.
20. **DRUG FREE WORKPLACE CERTIFICATION.** If not already completed during the solicitation process, in compliance with section 287.087, Florida Statutes, Consultant shall, prior to the commencement of work under this Agreement, execute the City's Drug Free Workplace Certification and it shall thereafter be deemed to be included as part of this Agreement.
21. **NON-DISCRIMINATORY PRACTICES.** Consultant, for itself, its delegates, successors-in-interest, and assigns, and as part of the consideration hereof, does hereby covenant and agree that in the furnishing of Services to the City under this Agreement, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to this Agreement on the basis of race, color, religion ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status. Consultant further covenants and agrees that it shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines and as such rules, regulations, or guidelines may from time to time be amended.

22. **E-VERIFY.** Pursuant to section 448.095, Consultant shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Consultant shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Consultant certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Consultant understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Consultant may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Consultant shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit www.e-verify.gov for more information regarding the E-Verify System.
23. **INDEPENDENT CONTRACTOR STATUS.** City expressly acknowledges Consultant is an independent contractor, and nothing in this Agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing the City to exercise control or discretion over the manner or method by which Consultant performs hereunder.
24. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
25. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
26. **INDEMNITY.** Consultant shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from damages, claims, losses, costs, and expenses, including attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of negligent errors, acts, or omissions by Consultant and contemplated by this Agreement to the extent allowed by section 725.08, Florida Statutes, and to the extent that the services rendered pursuant to the Agreement were services of a "Design Professional" as defined in section 725.08(4), Florida Statute, including without limitation, harm or personal injury to third persons during the term of this Agreement.
27. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
28. **NOTICES.** All notices required or permitted under this Agreement shall be given in writing and shall be deemed sufficiently served if delivered by registered or certified mail, with return receipt requested; or delivered personally; or delivered via electronic mail (as provided below) and

followed with delivery of a hard copy. All notices shall be addressed to the respective parties as follows:

If to Consultant:

Tillman and Associates Engineering, LLC
J. David Tillman, P.E.
1720 SE 16th Avenue, Bldg. 100
Ocala, Florida 34471
Phone: 352-387-4540
Fax: 352-387-4545
Email: permits@tillmaneng.com

If to City of Ocala:

Daphne M. Robinson, Esq. - Contracting Officer
City of Ocala
110 SE Watula Avenue, Third Floor
Ocala, Florida 34471
Phone: 352-629-8343
Email: notices@ocalafl.org

Copy to:

William E. Sexton, Esq., City Attorney
City of Ocala
110 SE Watula Avenue, Third Floor
Ocala, Florida 34471
Phone: 352-401-3972
E-mail: cityattorney@ocalafl.org

29. **ATTORNEYS FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.
30. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

31. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
32. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
33. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all who shall be bound by the provisions hereof.
34. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
35. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
36. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.
37. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
38. **ELECTRONIC SIGNATURE(S).** Consultant, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this agreement. Further, a duplicate or copy of the agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original agreement for all purposes.
39. **ENTIRE AGREEMENT.** This Agreement, including those documents referenced in the Contract Documents section of this Agreement, constitute the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

40. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on 3/14/2023.

ATTEST

DocuSigned by:

Angel B. Jacobs

Angel B. Jacobs

City Clerk

CITY OF OCALA

DocuSigned by:

James P. Hilty, Sr.

James P. Hilty, Sr.

City Council President

Approved as to form and legality

DocuSigned by:

William E. Sexton

William E. Sexton, Esq.

City Attorney

**TILLMAN AND ASSOCIATES
ENGINEERING, LLC**

DocuSigned by:

Jeff McPherson - Tillman & Associates Engineering, LLC

B48E46594754450...

Jeff McPherson - Tillman & Associates Engineering, LLC

(Name of Authorized Signatory)

Principal Engineer

(Title of Authorized Signatory)

Exhibit A Consultant Loaded Rate Sheet Tillman & Associates Engineering, LLC		
		
Job Classification	Unit	Loaded Rates
Professional Engineer V	HOURL	\$295.00 /hour
Professional Engineer IV	HOURL	\$230.00 /hour
Professional Engineer III	HOURL	\$205.00/hour
Professional Engineer II	HOURL	\$185.00/hour
Professional Engineer I	HOURL	\$160.00/hour
Engineer In Training II	HOURL	\$130.00/hour
Engineer In Training I	HOURL	\$115.00/hour
Landscape Architect III	HOURL	\$125.00/ hour
Landscape Architect II	HOURL	\$115.00/hour
Landscape Architect I	HOURL	\$105.00/hour
Engineer Technician IV	HOURL	\$140.00/hour
Engineer Technician III	HOURL	\$125.00/hour
Engineer Technician II	HOURL	\$110.00/hour
Engineer Technician I	HOURL	\$90.00/ hour
Planning Technician III	HOURL	\$140.00/hour
Planning Technician II	HOURL	\$115.00/hour
Planning Technician I	HOURL	\$95.00/hour
Field Representative II	HOURL	\$100.00/hour
Field Representative I	HOURL	\$80.00/hour
Technical Support / Analyst IV	HOURL	\$150.00/hour
Technical Support / Analyst III	HOURL	\$135.00/hour
Technical Support / Analyst II	HOURL	\$120.00/hour
Technical Support / Analyst I	HOURL	\$95.00/hour
Clerical / Permit Coordinator III	HOURL	\$95.00/hour
Clerical / Permit Coordinator II	HOURL	\$85.00/hour
Clerical / Permit Coordinator I	HOURL	\$75.00/hour
Mileage	Mile	¢.44.5 /mile

Exhibit B – Awarded Work Groups CONTRACT# ENG/220333

Tillman and Associates Engineering, LLC Awarded Work Groups
2.0 Project Development Environmental Studies
3.1 Minor Highway Design
3.2 Major Highway Design
3.3 Controlled Access Highway Design
6.1 Traffic Engineering Studies
6.2 Traffic Signal Timing
6.3.1 Intelligent Trans Sys Analysis and Design
6.3.2 Intelligent Transportation System Implementation
6.3.3 Intelligent Trans Traffic Engineering Sys Communication
7.1 Signing, Pavement Marking and Channelization
7.2 Lighting
7.3 Signalization
8.1 Control Surveying
8.2 Design, Right of Way Construction Surveying
8.3 Photogrammetric Mapping
8.4 Right of Way Mapping
8.5 GIS Mapping
9.1 Soil Exploration
9.2 Geotechnical Classification Lab Testing
9.3 Highway Materials Testing
9.4.1 Standard Foundation Studies
10.1 Roadway Construction Engineering Inspection
10.3 Construction Materials Inspection
10.4 Minor Bridge & Misc. Structures CEI
13.3 Policy Planning
13.4 Systems Planning
13.5 Subarea/Corridor Planning
13.6 Land Planning/Engineering
13.7 Transportation Statistics
15.0 Landscape Architect
27.1 Aquifer Hydraulic Studies
27.2 Consumptive Permitting
27.3 Water/Wastewater Permitting
27.4 Well Performance Testing
27.8 Water Modeling/Sewer Modeling
27.9.1 Wastewater Plant Design
27.9.2 Wastewater Plant Design Reclaimed
27.9.3 Water Plant Design
28.1 Pump Station & Force Main Design
28.2 Stormwater Drainage Analysis
29.1 Environmental Engineering Services

Exhibit C – Consultant Proposal

CONTRACT# ENG/220333

Tillman and Associates Engineering, LLC's submitted proposal

is available for inspection and copying at:

City of Ocala, Procurement and Contracting

110 SE Watula Avenue

Ocala, Florida, 34471

Certificate Of Completion

Envelope Id: 4586FB3AB16D4419A4032B650A1C96BE

Status: Completed

Subject: FOR SIGNATURE - Continuing Professional Services Agreement - Citywide (ENG/220333)

Source Envelope:

Document Pages: 15

Signatures: 4

Certificate Pages: 5

Initials: 0

AutoNav: Enabled

Enveloped Stamping: Enabled

Time Zone: (UTC-05:00) Eastern Time (US & Canada)

Envelope Originator:

Patricia Lewis

110 SE Watula Avenue

City Hall, Third Floor

Ocala, FL 34471

plewis@ocalafl.org

IP Address: 216.255.240.104

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Status: Original

3/9/2023 12:37:12 PM

Holder: Patricia Lewis

plewis@ocalafl.org

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Pool: StateLocal

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Pool: City of Ocala - Procurement & Contracting

Location: DocuSign

Signer Events

William E. Sexton

wsexton@ocalafl.org

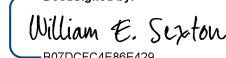
City Attorney

City of Ocala

Security Level: Email, Account Authentication
(None)

Signature

DocuSigned by:



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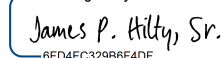
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James P. Hilty, Sr.

jhilty@ocalafl.org

Security Level: Email, Account Authentication
(None)

DocuSigned by:



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Signature Adoption: Pre-selected Style

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Signed using mobile

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Electronic Record and Signature Disclosure:

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Angel B. Jacobs

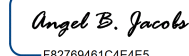
ajacobs@ocalafl.org

City Clerk

City of Ocala

Security Level: Email, Account Authentication
(None)

DocuSigned by:



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Signature Adoption: Pre-selected Style

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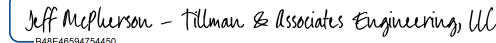
Jeff McPherson - Tillman & Associates Engineering,
LLC

jmcpherson@tillmaneng.com

Principal Engineer

Security Level: Email, Account Authentication
(None)

DocuSigned by:



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Signature Adoption: Pre-selected Style

Using IP Address: 216.255.252.247

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Electronic Record and Signature Disclosure:

Accepted: 3/13/2023 1:19:27 PM

ID: 899598e5-e219-4130-9252-018f7c6fb6cf

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Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/9/2023 12:45:20 PM
Certified Delivered	Security Checked	3/13/2023 1:19:27 PM
Signing Complete	Security Checked	3/14/2023 8:52:47 PM
Completed	Security Checked	3/14/2023 8:52:47 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Ocala - Procurement & Contracting (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Ocala - Procurement & Contracting:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: contracts@ocalafl.org

To advise City of Ocala - Procurement & Contracting of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at contracts@ocalafl.org and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Ocala - Procurement & Contracting

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to contracts@ocalafl.org and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Ocala - Procurement & Contracting

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to contracts@ocalafl.org and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Ocala - Procurement & Contracting as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Ocala - Procurement & Contracting during the course of your relationship with City of Ocala - Procurement & Contracting.