

AGREEMENT NO. 2014-13

PROFESSIONAL DESIGN & ENGINEERING SERVICES FOR THE MULTIPURPOSE FIELDS AT BUTLER PARK

THIS AGREEMENT ("Agreement") is made and entered into this 14th day of July 2014, by and between the CITY OF NORTH PORT, a municipal corporation of the State of Florida, hereinafter referred to as the "CITY" and FLORIDA TRANSPORTATION ENGINEERING, INC., a Florida Corporation, hereinafter referred to as "CONSULTANT."

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

1. CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to diligently and timely perform services for the CITY relating to professional design and engineering services as identified in the Request for Proposal No. 2014-13 and in accordance with the overall negotiated Scope of Services described in Attachment A with detailed tasks and associated fees in Attachment B.
- B. This Agreement shall commence immediately upon the execution of the Agreement by both the CITY and the CONSULTANT and upon CONSULTANT's receipt of the written Notice to Proceed from the CITY's Purchasing office and shall continue through the completion of the project. The estimated completion date is **December 15, 2014**.

2. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES

A. COMPENSATION

- 1. CONSULTANT shall receive **SIXTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$67,500.00)** as compensation for its services. This compensation shall include all profit, direct and indirect labor costs, personnel related costs, overhead and administrative costs, travel related out-of-pocket expenses and costs, and all other costs which are necessary to provide the services as outlined in this Agreement. The Scope of Services and Fee Schedule (Attachments A and B, respectively) are attached hereto and incorporated herein.
- 2. The CITY's performance and obligation to pay under this Agreement are contingent upon an appropriation by the City Commission.
- 3. **ADDITIONAL SERVICES:** Additional design and engineering services related to the multi-purpose fields at Butler Park may be performed under this Agreement as agreed to by both parties in a written task order in accordance with the hourly fee schedule in Attachment B and approved by the City Manager or designee. Any additional services or work performed before a written task order is executed shall not be compensated by the City.

B. METHOD OF PAYMENT

- 1. The CITY shall pay the CONSULTANT through payment issued by the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes, upon receipt of the CONSULTANT's invoice and written approval of same by the

CITY's Administrative Agent indicating that services have been rendered in conformity with this Agreement. The CONSULTANT shall submit an invoice for payment to the CITY for those specific tasks as described in the Scope of Services that were completed during that invoicing period.

2. For those specific services that were partially completed, progress payments shall be paid in proportion to the percentage of completed work on those specific services approved in writing by the CITY's Administrative Agent based on the percentage of the amount for those specific services.
3. The CONSULTANT's invoices shall be in a form satisfactory to the City of North Port Finance Department, who shall initiate disbursements.

3. LIABILITY OF CONSULTANT

The CONSULTANT shall indemnify and hold harmless the CITY, its Commissioners, officers and employees, from all liabilities, damages, losses and costs (including, but not limited to, reasonable attorneys' fees and court costs, whether such fees and costs are incurred in negotiations, at the trial level or on appeal, or in the collection of attorneys' fees), to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT, or CONSULTANT's officers, employees, agents, and other persons employed or utilized by the CONSULTANT in the performance of, or the failure to perform, the Agreement.

In the event of a claim, the CITY shall promptly notify the CONSULTANT in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the address provided for receipt of notices in this Agreement. Such notification may also be provided by fax transmission to the following fax number:

FAX: 941.639.4851

The CITY shall provide all available information and assistance that the CONSULTANT may reasonably require regarding any claim. This agreement for indemnification shall survive termination or completion of the Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the CITY and such insurance coverage shall not be deemed a limitation on the CONSULTANT's liability under the indemnity provided in this section. In any proceedings between the parties arising out of or related to this Indemnity provision, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).

Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the CITY as set forth in Florida Statute § 768.28.

4. CONSULTANT'S INSURANCE

A. INSURANCE

Before performing any work, CONSULTANT shall procure and maintain, during the life of the Agreement, the insurance listed below, unless otherwise specified. The policies of insurance

shall be primary and written on forms acceptable to the CITY and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida and meet a minimum financial AM Best and Company rating of no less than "Excellent." No changes are to be made to these specifications without prior written specific approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with CONSULTANT.

1. Workers Compensation: Coverage to apply for all employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$100,000 each accident; \$100,000 each employee; and \$500,000 policy limit for disease.
2. Professional Liability Insurance: Minimum \$1,000,000 per occurrence for this project, and with a \$1,000,000 policy term general aggregate. Coverage shall be extended beyond the policy year term either by a supplemental extended reporting period (ERP) with as great of duration as available, with no less coverage and reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made. The City prefers all Professional Liability Insurance be written on an Occurrence Form; however, in the event that the professional liability insurance required by the Agreement is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained for a period of two (2) years or an extended reporting period (ERP) with tail coverage will be obtained and maintained for a period of two (2) years beginning at the time work under this Agreement is completed.
3. Comprehensive Commercial General Liability Insurance: Occurrence form required. Aggregate must apply separately to this Agreement. Minimum \$300,000 each occurrence; \$600,000 general aggregate; \$600,000 products and completed ops; and \$100,000 fire damage.
4. Automobile Insurance: To include all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$300,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Agreement.

The City of North Port is to be named additional insured on Comprehensive Commercial General Liability Policy. Certification of same shall be required. All certificates of insurance must be on file with and approved by the CITY before commencement of any work activities under this Agreement.

Any and all deductibles to the above referenced policies are to be the responsibility of the CONSULTANT. The CONSULTANT's insurance is considered primary for any loss, regardless of any insurance maintained by the CITY. The CONSULTANT is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.

All insurance policies must be issued by companies of recognized responsibility licensed to do business in Florida and must contain a provision that prohibits cancellation unless the CITY is provided notice as stated within the policy. It is the CONSULTANT's responsibility to provide notice to the CITY.

B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or thru other means, agree to waive all rights of subrogation against the CITY, its officers, officials, employees and volunteers, and the CITY's insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by the CONSULTANT for the CITY. It is the CONSULTANT's responsibility to notify their insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. Additionally, the CONSULTANT, its officers, officials, agents, employees, volunteers, and any subcontractors, agree to waive all rights of subrogation against the CITY and its insurance carriers for any losses paid, sustained or incurred, but not covered by insurance, that arise from the contractual relationship or work performed. This waiver also applies to any deductibles or self-insured retentions the CONSULTANT or its agents may be responsible for.

C. POLICY FORM

1. All policies, required by this Agreement, with the exception of Professional Liability and Workers Compensation, or unless specific approval is given by Risk Management through the CITY's Purchasing Office, are to be written on an occurrence basis, shall name the City of North Port, its Commissioners, officers, agents, employees and volunteers as additional insured as their interest may appear under this Agreement. Insurer(s), with the exception of Professional Liability and Workers Compensation, shall agree to waive all rights of subrogation against the City of North Port, its Commissioners, officers, agents, employees or volunteers.
2. Insurance requirements itemized in this Agreement, and required of the CONSULTANT, shall be provided by or in behalf of all subcontractors to cover their operations performed under this Agreement. The CONSULTANT shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.
3. Each insurance policy required by this Agreement shall:
 - a. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - b. Be endorsed to state that coverage shall not be suspended, voided or cancelled by either party except after notice is delivered in accordance with the policy provisions. The CONSULTANT is to notify the City Purchasing Office by written notice via certified mail, return receipt requested.
4. The CITY shall retain the right to review, at any time, coverage, form, and amount of insurance.
5. The procuring of required policies of insurance shall not be construed to limit CONSULTANT's liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of CONSULTANT's liability for indemnity of the CITY shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the CONSULTANT and its carrier.

6. The CONSULTANT shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the CITY is an insured under the policy.
7. Claims Made Policies will be accepted for professional liability and hazardous materials and such other risks as are authorized by the CITY's Purchasing Office. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, the CONSULTANT agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
8. Certificates of Insurance evidencing Claims Made or Occurrences form coverage and conditions to this Agreement, as well as the Agreement number and description of work, are to be furnished to the CITY's Purchasing Office (4970 City Hall Boulevard, Suite 337, North Port, FL 34286) prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall be received by the CITY's Purchasing Office before the CONSULTANT will be allowed to commence or continue work. The Certificate of Insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein.
9. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Agreement shall be provided to the CONSULTANT's insurance company and the CITY's Purchasing Office as soon as practicable after notice to the insured.

5. RESPONSIBILITY OF THE CONSULTANT

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all reports, designs, specifications, other documents and data used or produced by or at the behest of the CONSULTANT under this Agreement. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- B. If the CONSULTANT is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- C. The CONSULTANT warrants that 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 that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Agreement.
- D. CONSULTANT shall perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent consultant firms in effect at the time

CONSULTANT's services are rendered. The CONSULTANT covenants and agrees that it and its employees shall be bound by the Standards of Conduct of Florida Statutes, Section 112.313, as it relates to work performed under this Agreement. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

- E. The CONSULTANT shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- F. The CONSULTANT shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at the CONSULTANT's offices for the purpose of inspection, audit, and copying during normal business hours by the CITY, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services.
- G. In accordance with F.S. §119.0701, CONSULTANT shall comply with all public records laws, and shall specifically:
 - (1) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.
 - (2) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in chapter 119 or as otherwise provided by law.
 - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - (4) Meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONSULTANT upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

Failure of the CONSULTANT to comply with these requirements shall be a material breach of this Agreement.

6. OWNERSHIP AND USE OF DOCUMENTS

It is understood and agreed that all the documents, or reproducible copies, developed by the CONSULTANT in connection with its services, including but not limited to reports, designs, specifications, and data, shall be delivered to, and shall become the property of the CITY as they are received by the CITY and when CONSULTANT has been fully compensated as set forth herein. CONSULTANT may keep copies of all work products for its records. The CONSULTANT hereby assigns all its copyright and other proprietary interests in the products of this Agreement to the CITY. Specific written authority is required from the CITY's Administrative Agent for the CONSULTANT to use any of the work products of this Agreement on any non-CITY project.

Notwithstanding the above, any reuse of the work products by the CITY on other projects will be at the risk of the CITY.

7. TIMELY PERFORMANCE OF CONSULTANT'S PERSONNEL

The timely performance and completion of the required services is vitally important to the interest of the CITY. The CONSULTANT shall assign a Project Manager, together with such other personnel as are necessary, to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Agreement. The personnel assigned by the CONSULTANT to perform the services of this Agreement shall comply with the information presented in the professional services response proposal made a part hereof by reference. The CONSULTANT shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to the CONSULTANT's key personnel must receive the CITY's Administrative Agent's written approval before said changes or substitution can become effective.

- A. The services to be rendered by the CONSULTANT shall commence within one (1) week of the CONSULTANT's receipt of written Notice to Proceed from the CITY.
- B. The CONSULTANT specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth, subject only to delays caused through no fault of the CONSULTANT or the CITY. Time is of the essence in the performance of this Agreement.
- C. The CONSULTANT agrees to provide to the CITY's Administrative Agent, monthly written progress reports concerning the status of the work. The CITY's Administrative Agent may determine the format for this progress report. The CITY shall be entitled at all times to be advised at its request, and in writing, as to the status of work to be performed by the CONSULTANT.
- D. In the event unreasonable delays occur on the part of the CITY or regulatory agencies as to the approval of any plans, permits, reports or other documents submitted by the CONSULTANT which delay the Project Schedule completion date, the CITY shall not unreasonably withhold the granting of an extension of the Project Schedule time limitation equal to the aforementioned delay. The Project Schedule is attached as Attachment C and incorporated herein.

8. OBLIGATIONS OF CITY

- A. The CITY's Administrative Agent is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this Agreement. If necessary, a specific program manager will be authorized to perform the responsibilities of the CITY's Administrative Agent. The CITY shall designate any specific program manager in the Notice to Proceed. The responsibility of the CITY's Administrative Agent shall include:
 - 1. Examination of all reports, sketches, drawings, estimates, proposals, and other documents presented by the CONSULTANT, and render in writing, decisions pertaining thereto within a reasonable time.

2. Transmission of instructions, receipt of information, interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
 3. Review for approval or rejection all of the CONSULTANT's documents and payment requests.
- B. The CITY shall, upon request, furnish the CONSULTANT with all existing data, plans, studies and other information in the CITY's possession which may be useful in connection with the work of this Project, all of which shall be and remain the property of the CITY and shall be returned to the CITY's Administrative Agent upon completion of the services to be performed by the CONSULTANT.
- C. The CITY's Administrative Agent shall conduct periodic reviews of the work of the CONSULTANT necessary for the completion of the CONSULTANT's services during the period of this Agreement, and may make other CITY personnel available, where required and necessary to assist the CONSULTANT. The availability and necessity of said personnel to assist the CONSULTANT shall be determined solely within the discretion of the CITY.
- D. The CITY shall not provide any services to the CONSULTANT in connection with any claim brought on behalf of or against the CONSULTANT.

9. TERMINATION

- A. The City Manager or designee shall have the right at any time upon thirty (30) calendar days written notice to the CONSULTANT to terminate the services of the CONSULTANT and, in that event, the CONSULTANT shall cease work and shall deliver to the CITY all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the CONSULTANT in connection with its services. The CITY shall, upon receipt of the aforesaid documents, pay to the CONSULTANT and the CONSULTANT shall accept as full payment for its services, a sum of money equal to (1) the fee for each completed and accepted task as shown in Attachment A – Scope of Services and Attachment B – Consultant's Fee Schedule, plus (2) the percentage of the work completed in any commenced but uncompleted task, less (3) all previous payments in accordance with Section 2 and any amounts withheld by the CITY to settle claims against or to pay indebtedness of the CONSULTANT in accordance with the provisions of the Agreement.
- B. FUNDING IN SUBSEQUENT FISCAL YEARS: It is expressly understood by the CITY and the CONSULTANT that funding for any subsequent fiscal year of the Agreement is contingent upon appropriation of monies by the City Commissioners, and the continuing receipt of state or federal grant funding, if applicable. In the event that funds are not available or appropriated, the CITY reserves the right to terminate the Agreement. The CITY will be responsible for payment of any outstanding invoices and work completed by the CONSULTANT prior to such termination.
- C. In the event that the CONSULTANT has abandoned performance under this Agreement, then the City Manager or designee may terminate this Agreement upon three (3) calendar days' written

notice to the CONSULTANT indicating its intention to do so. The written notice shall state the evidence indicating the CONSULTANT's abandonment.

- D. The CONSULTANT shall have the right to terminate services only in the event of the CITY failing to pay the CONSULTANT's properly documented and submitted invoice within ninety (90) calendar days of the approval by the CITY's Administrative Agent, or if the project is suspended by the CITY for a period greater than ninety (90) calendar days.
- E. The City Manager or designee reserves the right to terminate and cancel this Agreement in the event the CONSULTANT shall be placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the CONSULTANT or an assignment is made for the benefit of creditors.
- F. In the event CONSULTANT breaches this Agreement, the CITY shall provide written notice of the breach and CONSULTANT shall have ten (10) days from the date the notice is received to cure. If CONSULTANT fails to cure within the ten (10) days, the City Manager or designee shall have the right to immediately terminate the Agreement and/or refuse to make any additional payment, in whole or in part, and, if necessary, may demand the return of a portion or the entire amount previously paid to CONSULTANT due to:
 - 1. The quality of a portion or all of the CONSULTANT's work not being in accordance with the requirements of this Agreement;
 - 2. The quantity of the CONSULTANT's work not being as represented in the CONSULTANT's Payment Request, or otherwise;
 - 3. The CONSULTANT's rate of progress being such that, in the CITY's opinion, substantial or final completion, or both, may be inexcusably delayed;
 - 4. The CONSULTANT's failure to use Agreement funds, previously paid the CONSULTANT by the CITY, to pay CONSULTANT's project related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
 - 5. Claims made, or likely to be made, against the CITY or its property;
 - 6. Loss caused by the CONSULTANT;
 - 7. The CONSULTANT's failure or refusal to perform any of the obligations to the CITY, after written notice and a reasonable opportunity to cure as set forth above.

In the event that the CITY makes written demand upon the CONSULTANT for amounts previously paid by the CITY as contemplated in the clause, the CONSULTANT shall promptly comply with such demand. The CITY's rights hereunder survive the term of this Agreement, and are not waived by final payment and/or acceptance.

10. INDEPENDENT CONTRACTOR

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the CITY. All

persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the CITY shall be that of an independent contractor and not as employees or agents of the CITY. The CONSULTANT does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for in this Agreement. The CONSULTANT shall not pledge the CITY'S credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

11. ENTIRE AGREEMENT

This Agreement constitutes the sole and complete understanding between the parties and supersedes all agreements between them, whether oral or written with respect to the subject matter.

12. AMENDMENT

No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any increase in compensation for the services in Attachment A or the amount of hourly rates in Attachment B, the City Commissioners for the CITY and the duly authorized representative for the CONSULTANT shall agree in writing to this change. For all other changes, the CITY's Administrative Agent and the CONSULTANT's representative shall agree in writing to the change.

13. ASSIGNMENT

The CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the City Manager or designee, except that claims for the money due or to become due the CONSULTANT from the CITY under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the CITY. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the CITY.

14. WAIVER

The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

15. GOVERNING LAW, VENUE AND SEVERABILITY

The rights, obligations and remedies of the parties under this Agreement shall be governed by the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement shall be in Sarasota County, Florida. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.

16. AUTHORITY

The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

17. NO HIRE

The CONSULTANT shall not hire any CITY employee associated with this project throughout the duration of the Agreement and for a period of one (1) year after completion.

18. NOTICES

Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sent by certified mail, return receipt requested, or via a recognized national courier service in a manner that provides for written or electronic record of delivery, to the addresses listed below:

CONSULTANT'S REPRESENTATIVE:

William McBride
Sr. Vice President
Florida Transportation Engineering, Inc.
8250 Pascal Drive
Punta Gorda, FL 33950
TEL 941.639.2818 Ext. 121
FAX 941.639.4851
EMAIL: bmcbride@fteinc.net

CITY'S ADMINISTRATIVE AGENT:

General Services Director
City of North Port,
4970 City Hall Blvd.
North Port, FL 34286
TEL 941.429.7129
FAX 941.429.7135
EMAIL: rcarmichael@cityofnorthport.com

Changes in the respective addresses may be made from time to time by either party by written notice to the other party.

19. PARAGRAPH HEADINGS

Paragraph headings are for the convenience of the parties and for the reference purposes only and shall be given no legal effect.

20. ATTORNEYS' FEES

In any proceedings between the parties arising out of or related to this Agreement, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).

21. CONFLICTS

In the event of any conflict between the provisions of this Agreement and the RFP No. 2014-13 or CONSULTANT's response, which are made a part hereof by reference, this signed Agreement (excluding the RFP and CONSULTANT's proposal) shall take precedence, followed by the provisions of the RFP, and then by the terms of the CONSULTANT's proposal.

IN WITNESS WHEREOF, the parties have executed the agreement as of the date first above written.

ATTEST:

CITY OF NORTH PORT, FLORIDA

By: _____
Helen Raimbeau, MMC, City Clerk

By: _____
Jonathan R. Lewis, ICMA-CM, City Manager

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
Robert K. Robinson, City Attorney

WITNESS:

By: Caryn Holler

CONSULTANT:

By: 
WILLIAM J. MCBRIDE
Print

ATTACHMENT A – SCOPE OF SERVICES

TASK #1 – LAND SURVEYING

FEE: \$10,000.00 MOP: LS

THE CONSULTANT WILL OBTAIN OR PERFORM SURVEYS AS NECESSARY TO PREPARE A BASE MAP OF THE APPROXIMATE 20 AC. OF LAND LOCATED AT BUTLER PARK UTILIZING THE FOLLOWING TASKS:

THE DESCRIPTION OF THE PROPERTY IS “PORTION OF BUTLER PARK, CITY OF NORTH PORT, SARASOTA COUNTY, PARCEL ID NUMBER 0975-00-4000, LYING IN SECTION 20, TOWNSHIP 39 SOUTH, RANGE 21 EAST, SARASOTA COUNTY, FLORIDA.”

THE SCOPE OF SERVICES FOR LAND SURVEYING INCLUDE PREPARATION OF A TOPOGRAPHIC LOCATION SURVEY BEING REFERENCED TO THE CENTER LINE OF THE RIGHT OF WAY LINE OF WEST PRICE BOULEVARD AND THE WESTERLY CENTER LINE OF RIGHT OF WAY LINE OF SPRING HAVEN DRIVE. SURVEY TO FIELD LOCATE AND DEPICT GROUND ELEVATION AT APPROXIMATELY A 50' GRID, LOCATING VISIBLE DRAINAGE FEATURES SUCH AS SWALES, RETENTION AREA DRAINAGE STRUCTURES, VISIBLE UTILITIES, LIGHT POLES, FENCES, TREES, STRUCTURES, BALL FIELD PLAY AREAS, ACCESS ROAD AND THE EASTERLY PAVED PARKING AREA TO THE EXISTING TOP OF BACK ALONG EASTERLY PROPERTY LINE, ON-SITE PARKING AND 20' ALONG THE SOUTHERLY PAVED ACCESS ROAD LOCATING ALL EXISTING IMPROVEMENTS TO THE WESTERLY CENTER LINE OF RIGHT OF WAY LINE OF SPRING HAVEN DRIVE.

NOTE: HORIZONTAL DATA TO BE BASED ON FLORIDA STATE PLANE WEST ZONE VERTICAL DATA TO BE BASED ON N.A.V.D. 1988 AND TO BE EXPRESSED IN U.S. STANDARD FEET AND DECIMALS THEREOF.

THE CONSULTANT WILL FIELD LOCATE CITY OF NORTH PORT OWNED UNDERGROUND UTILITIES AT 100' INTERVALS BY POT HOLING (UNLESS UNDER PAVEMENT) TO IDENTIFY CONFLICTS OR POTENTIAL CONFLICTS WITH EXISTING AND PROPOSED UTILITIES DURING CONSTRUCTION. THE SIZE AND HORIZONTAL AND VERTICAL LOCATION OF EACH UTILITY WILL BE DOCUMENTED ON THE PLANS. THIS TASK INCLUDES COORDINATION BY THE CONSULTANT WITH VARIOUS UTILITY COMPANIES NOT OWNED BY CITY OF NORTH PORT. THE RESPECTIVE UTILITY SHALL BE RESPONSIBLE FOR “POT HOLING” (UNLESS UNDER PAVEMENT) SAID UNDERGROUND SYSTEMS AND PROVIDING THE SIZE AND HORIZONTAL AND VERTICAL LOCATION OF SAID UTILITY. CONFLICTS RESULTING FROM INACCURATE INFORMATION PROVIDED BY THE UTILITY COMPANIES ARE NOT THE RESPONSIBILITY OF THE CONSULTANT.

THE DELIVERABLES INCLUDE THE FOLLOWING:

- SIGNED & SEALED SPECIFIC PURPOSE SURVEY – CONTROL AND TOPOGRAPHIC.
- BASE DRAWING – SURVEYS AND UTILITIES: SEVEN (7) SIGNED AND SEALED SURVEY HARD COPIES TO BE PROVIDED AT COMPLETION WITH DIGITAL FILES IN AUTOCADD 2010 FORMAT.

TASK #2 - GEOTECHNICAL INVESTIGATION AND REPORT

FEE: \$5,000.00 MOP: LS

THE CONSULTANT SHALL PERFORM A TOTAL OF SIX (6) AUGER BORINGS (TWO (2) PER MULTI-PURPOSE FIELD) TO A DEPTH OF 6 FEET. SAMPLING SHALL BE IN GENERAL ACCORDANCE WITH INDUSTRY STANDARD PROCEDURES. IN ADDITION GROUNDWATER LEVELS SHALL BE OBSERVED AND RECORDED DURING AND IMMEDIATELY AFTER DRILLING. ONCE THE SAMPLES HAVE BEEN COLLECTED AND

CLASSIFIED IN THE FIELD, THEY SHOULD BE PLACED IN APPROPRIATE SAMPLE CONTAINERS AND TRANSPORTED TO THE LABORATORY.

CONDITIONS/ITEMS TO BE PROVIDED BY CITY OF NORTH PORT – ITEMS TO BE PROVIDED BY THE CITY SHALL INCLUDE THE RIGHT OF ENTRY TO CONDUCT THE EXPLORATION AND AN AWARENESS AND/OR LOCATION OF ANY PRIVATE SUBSURFACE UTILITIES EXISTING IN THE AREA. THE CONSULTANT SHALL CONTACT THE FLORIDA ONE CALL SERVICE (FOCS) FOR LOCATION OF UTILITIES IN PUBLIC EASEMENTS. LOCATION OF PRIVATE LINES ON THE PROPERTY IS NOT PART OF THE FOCS OR THE CONSULTANT’S SCOPE. ALL PRIVATE LINES SHALL BE MARKED BY OTHERS PRIOR TO COMMENCEMENT OF DRILLING.

FOR SAFETY PURPOSES, ALL BORINGS SHALL BE BACKFILLED PRIOR TO LEAVING THE PROJECT SITE AT THE COMPLETION OF DRILLING. THE SAMPLES SHALL BE TESTED IN THE LABORATORY TO DETERMINE PHYSICAL ENGINEERING CHARACTERISTICS. TESTING SHALL BE PERFORMED UNDER THE DIRECTION OF A GEOTECHNICAL ENGINEER AND SHALL INCLUDE VISUAL CLASSIFICATION, MOISTURE CONTENT, FINES CONTENT, AND ATTERBERG LIMITS, AS APPROPRIATE.

THE RESULTS OF THE FIELD AND LABORATORY PROGRAMS SHALL BE EVALUATED BY A PROFESSIONAL GEOTECHNICAL ENGINEER LICENSED IN THE STATE OF FLORIDA. BASED ON THE RESULTS OF THE EVALUATION, AN ENGINEERING REPORT SHALL BE PREPARED THAT DETAILS THE RESULTS OF THE TESTING PERFORMED, PROVIDES LOGS OF THE BORINGS, AND A DIAGRAM OF THE SITE/BORING LAYOUT. THE REPORT SHALL INCLUDE THE FOLLOWING:

- COMPUTER GENERATED BORING LOGS WITH SOIL STRATIFICATION BASED ON VISUAL SOIL CLASSIFICATION
- SUMMARIZED LABORATORY DATA
- GROUNDWATER LEVELS OBSERVED DURING AND AFTER COMPLETION OF DRILLING
- BORING LOCATION PLAN
- SUBSURFACE EXPLORATION PROCEDURES
- ENCOUNTERED SOIL CONDITIONS
- ESTIMATED SEASONAL HIGH GROUNDWATER LEVEL (SHGWL)

TASK #3 – ENGINEERING PLANS AND CONSTRUCTION DOCUMENTS

FEE: \$35,000.00 MOP: LS

THE DESIGN TEAM SHALL PREPARE PLANS FOR DEMOLITION OF THE EXISTING FIELDS AND PREPARE CONSTRUCTION DOCUMENTS FOR THE DESIGN OF THREE NEW MULTI-PURPOSE FIELDS. THE CONSTRUCTION PLANS SHALL INCLUDE: COVER SHEET, LAND SURVEY, GENERAL NOTES SHEET, SITE PLAN, GRADING PLAN, UTILITY PLAN, DEMOLITION PLAN, PLAYING FIELD GRADING, IRRIGATION PLAN AND ASSOCIATED DETAILS. THE PHASE III (90%) AND PHASE IV (100%) PLANS SHALL ALSO INCORPORATE THE WRITTEN SPECIFICATIONS. THE FOLLOWING DELIVERABLES SHALL BE PROVIDED:

- 30%, 60% AND 90% PLANS.
- 100% PLANS (TO BE USED AS BID DOCUMENTS).
- QUALITY ASSURANCE/QUALITY CONTROL.
- PREPARE TECHNICAL WRITTEN SPECIFICATIONS PER THE CITY OF NORTH PORT STANDARDS.
- FINAL QUANTITIES AND ENGINEER’S OPINION OF PROBABLE COST.

TASK #4 - PERMITTING

FEE: \$10,000.00 MOP: LS

THE DESIGN TEAM SHALL PREPARE THE FOLLOWING:

- SWFWMD- PRE-SUBMITTAL MEETING.
- PREPARE SWFWMD MODIFICATION TO THE EXISTING PERMIT.
- PREPARE FINAL BID DOCUMENTS AND ENGINEER'S OPINION OF PROBABLE COST.
- REVISE PROJECT SCHEDULE DESIGN/PERMITTING MILESTONES DATES (IF NECESSARY).

TASK #5 – BID AND CONSTRUCTION SERVICES

HOURLY ESTIMATED FEE: \$7,500.00 MOP: HEF

THE DESIGN TEAM SHALL ASSIST WITH THE FOLLOWING:

- ATTEND A PRE-BID CONFERENCE.
- ATTEND A PRE-CONSTRUCTION CONFERENCE, PREPARE AND DISTRIBUTE MINUTES.
- REVIEW SHOP DRAWINGS.
- REVIEW AND RESPOND TO REQUEST FOR INFORMATION (RFI'S).
- CONSTRUCTION OBSERVATION/INSPECTION AND LOG FINDINGS.
- REVIEW FINAL AS-BUILT PLANS.
- ATTEND A SUBSTANTIAL COMPLETION WALK-THRU AND PREPARE A PUNCH LIST WITH PROJECT MANAGER.
- PREPARE A CERTIFICATION OF FINAL COMPLETION TO SWFWMD AND FDEP.

CITY OF NORTH PORT RESPONSIBILITY:

- THE CITY OF NORTH PORT SHALL PROVIDE THE CONSULTANT WITH FIELD LOCATIONS OF ALL CITY OWNED UTILITIES AND SHALL PROVIDE AS-BUILT DRAWINGS DEPICTING THE HORIZONTAL AND VERTICAL LOCATION OF WATERMAIN, RECLAIM AND WASTEWATER COLLECTION SYSTEM AS PART OF THE COMMUNITY CENTER IMPROVEMENT PROJECT OR LOCATED ON ADJACENT ROADWAYS.
- THE CITY OF NORTH PORT SHALL BE RESPONSIBLE FOR PAYMENT TO ALL PERMITTING AGENCIES.
- THE CITY OF NORTH PORT SHALL BE RESPONSIBLE FOR THE ASBESTOS EVALUATION REPORT OF THE EXISTING STRUCTURE ON-SITE AND BE RESPONSIBLE FOR PAYMENT OF REMOVAL OF ALL ASBESTOS MATERIALS OFF -SITE.
- THE CITY OF NORTH PORT SHALL PAY ALL PERMIT FEES ASSOCIATED WITH THE EXISTING BUILDINGS DEMOLITION AND UTILITY DISCONNECTIONS AND RELOCATION FEES ASSOCIATED WITH THIS PROJECT.
- THE CITY OF NORTH PORT HAS AGREED TO ANOTHER FUNDING SOURCE FOR THE COST OF ALL SPORTS RELATED FFE ITEMS (I.E. FOOTBALL POSTS, FOUNDATIONS, SOCCER GOALS, PADDING, BLEACHERS, ETC.)

ADDITIONAL SERVICES:

THE ABOVE SCOPE OF SERVICE OUTLINES THE TASKS ASSOCIATED WITH THIS PROJECT. ALL OTHER ITEMS NOT LISTED ABOVE WILL BE CONSIDERED ADDITIONAL PROFESSIONAL SERVICES AND SHALL NOT BE PROVIDED WITHOUT WRITTEN APPROVAL FROM THE CITY OF NORTH PORT BASED UPON ON THE ATTACHED HOURLY RATE SCHEDULE IN ATTACHMENT B.

EXAMPLES OF ADDITIONAL PROFESSIONAL SERVICES INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

- DOCUMENT REVISIONS DUE TO CHANGES IN PROGRAMMING, BOARD DIRECTION OR REGULATIONS; "60%, 90%". DOCUMENT REVISIONS DUE TO CHANGES IN THE APPROVED "100%'S" DUE TO VALUE ENGINEERING REQUESTS FROM THE CITY.
- CITY OR COUNTY DRC APPROVALS
- ELECTRICAL ENGINEERING, STRUCTURAL ENGINEERING OR MECHANICAL ENGINEERING DESIGN SERVICES
- UTILITY DESIGN, WATER DISTRIBUTION, WASTEWATER COLLECTION AND ELECTRICAL SERVICES.
- LANDSCAPE ARCHITECTURAL SERVICES (I.E. COMMON AREA HARDSCAPE, COMMON AREA IRRIGATION DOCUMENTS, ETC.)
- MEETING WITH STAKEHOLDERS OR CITY COMMISSIONER PUBLIC WORKSHOPS.
- BUILDING PERMITS
- TRAFFIC ENGINEERING
- US ACOE/ DREDGE & FILL PERMITTING – FEMA PERMITTING
- EPA NPDES PERMITTING
- ENVIRONMENTS ENGINEERING, PSA, WETLAND JURISDICTIONAL LINE.
- TECHNICAL SUPPORT FOR LEGAL SERVICES
- OTHER NON-LISTED PROFESSIONAL SERVICES

END OF ATTACHMENT A

ATTACHMENT B – FEE SCHEDULE

DESIGN, PERMITTING AND CONSTRUCTION ADMINISTRATION SERVICES

TASK NO.	DESCRIPTION	FEE
1,2,3,4	SURVEYING, GEOTECH, DESIGN AND PERMITTING (LUMP SUM)	\$60,000
5	CONSTRUCTION SERVICES (NOT TO EXCEED)	\$7,500
	TOTAL FEE:	\$67,500

ADDITIONAL SERVICES:

HOURLY FEE SCHEDULE

PROJECT PRINCIPAL	\$175.00	PER HOUR
PROJECT MANAGER	\$145.00	PER HOUR
PROJECT ENGINEER	\$135.00	PER HOUR
PROJECT LANDSCAPE ARCHITECT	\$135.00	PER HOUR
PROJECT DESIGNER	\$125.00	PER HOUR
PROJECT TECHNICIAN	\$85.00	PER HOUR
ADMINISTRATIVE ASSISTANT	\$60.00	PER HOUR
EXPERT WITNESS	\$200.00	PER HOUR
(PREPARATION AND TESTIMONY)		
REIMBURSABLE EXPENSE		
CD/DVD/EMAIL	\$30.00	PER MEDIA
PRINTS UP TO 24" X 26"	\$2.25	PER PRINT
PRINTS OVER 30" X 42"	\$5.25	PER PRINT
MYLAR/VELLUM UP TO 24" X 36"	\$10.50	PER PRINT
ENGINEERING COPIES UP TO 30" X 42"	\$10.50	PER PRINT

END OF ATTACHMENT B

ATTACHMENT C – PROJECT SCHEDULE

ANTICIPATED SCHEDULE IS TWENTY-ONE (21) WEEKS FROM NOTICE TO PROCEED TO COMPLETION OF BID DOCUMENTS.

- 30% DESIGN CONCEPTUAL DESIGN DOCUMENTS: (45 DAYS) - DATE **TBD**
INCLUDES STAFF REVIEW (14 DAYS) –
- 60% DESIGN DEVELOPMENT DOCUMENTS: (30 DAYS) – DATE **TBD**
INCLUDES STAFF REVIEW (14 DAYS) –
- 90% DESIGN DEVELOPMENT DOCUMENTS: (30 DAYS) – DATE **TBD**
INCLUDES STAFF REVIEW (14 DAYS) –
- 100% CONSTRUCTION DOCUMENTS: (30 DAYS) – DATE **TBD**
INCLUDES STAFF REVIEW (14 DAYS) –
- FINAL PLANS/BID DOCUMENTS: (15 DAYS) – DATE **TBD**

END OF ATTACHMENT C