

RESOLUTION NO. 22-28

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING MASTER SERVICES AGREEMENTS FOR PROFESSIONAL GEOTECHNICAL ENGINEERING SERVICES WITH SOUTHERN EARTH SCIENCES INC. AND NOVA ENGINEERING & ENVIRONMENTAL, LLC.

BE IT RESOLVED that:

1. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain federally funded Master Services Agreement between the City and Southern Earth Sciences, Inc., relating to Professional Geotechnical Engineering Services, in substantially the form and at the rates **attached** and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

2. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain federally funded Master Services Agreement between the City and Nova Engineering & Environmental Services, relating to Professional Geotechnical Engineering Services, in substantially the form and at the rates **attached** and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED, APPROVED AND ADOPTED in special session this 10th day of November, 2021.

**CITY OF PANAMA CITY BEACH,
FLORIDA**

By: 

Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, MMC, City Clerk

**MASTER SERVICES AGREEMENT
BETWEEN
CITY OF PANAMA CITY BEACH
AND SOUTHERN EARTH SCIENCES, INC.
RELATING TO
PROFESSIONAL GEOTECHNICAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this ____ day of November, 2021, by and between **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation ("City") and **SOUTHERN EARTH SCIENCES, INC.** ("Engineer").

PREMISES

WHEREAS, City desires to have Engineer assist City with geotechnical engineering, testing and construction inspections and testing services.

Work will consist of geotechnical engineering services, including testing services, on a wide variety of projects, including geotechnical engineering to support planning and documents or the engineering design of improvements for the City's water, wastewater, reclaimed water and stormwater systems; and environmental consulting services, including, but not limited to, Phase I and II environmental site assessments, asbestos and lead-based paint services, indoor air quality investigations and mold investigations; and materials testing services including, but not limited to, concrete and asphalt mix designs and construction inspections]. The projects shall meet the following criteria:

- A) Related to City construction projects for which construction costs to no exceed \$4,000,000, or
 - B) For specific geotechnical engineering projects or study activities when the fee for such professional engineering service does not exceed \$500,000, or
 - C) Related to City water, wastewater, reclaimed water and stormwater facilities and improvements which are included in the Utility Department's then current Five (5) Year Capital Plan,
- (collectively, the "Professional Services"); and

WHEREAS, the City intends this Agreement to be a cost-effective device for in-house engineering projects, and to augment City Staff in areas where specific expertise is not available, or in some cases where timely accomplishment of budgeted projects requires additional staff support; and

WHEREAS, the City desires to have two geotechnical engineers under independent, continuing master services agreements in order to have two firms to which to alternatively assign the recurring tasks; and

WHEREAS, City desires to employ Engineer for those purposes upon the terms and conditions in this Agreement, and Engineer is desirous of obtaining such employment and has represented that it is qualified and competent to perform such services upon said terms and conditions.

NOW, THEREFORE, in consideration of the following covenants, it is agreed:

1. SCOPE OF PROFESSIONAL SERVICES:

A. City retains Engineer to diligently, competently and timely perform the "Professional Services" on an as-needed basis. Upon request, Engineer will prepare a detailed, project specific scope of work for each task and phase of work to be undertaken in accordance with the general scope of services described in this agreement and in the request for statements of qualification which led to this Agreement. The proposed scope of work shall include a schedule for the work and, separately stated, a proposed fee. The proposed fee shall be a: (i) stipulated sum; (ii) stipulated sum plus one or more specified allowances which may be authorized by City Manager or his designee; (iii) a fee determined on a time-involved basis at the hourly rates specified on Exhibit A which shall include a maximum cost. Unless otherwise expressly set forth separately in the applicable fee proposal, the proposed fee shall be assumed to include all compensation which City will owe Engineer for the subject services, including all reimbursable expenses.

B. If accepted by City, the proposed scope of work shall be incorporated into a task order in materially the form attached as Exhibit B (each a "Task Order"). Each Task Order shall be numbered and dated, incorporate this Agreement and any additional terms related to that specific Task Order, and shall be signed both by the City and by the Engineer. If a term in this Agreement conflicts with a term in a Task Order, the term in the Task Order shall control to the extent of such conflict, but only for that Task Order.

C. In the event the City elects to enter, and for so long as the City keeps open this Agreement and another master services agreement in materially the form of this Agreement with a different engineering firm for the same Professional Services, the City shall assign specific tasks to Engineer and the other firm on a 1:1 alternating basis, but subject to equitable adjustments of assignments based upon the total City-generated workload in a rolling, 12 month average. The intent of the adjustments will be to keep the financial benefit of the work distributed between the firms as equal as may be practicable while still meeting the City's needs. Adjustments shall be made in the sole, unfettered discretion of the City, and Engineer agrees that if it objects to the rotation of tasks or any

adjustment made by the City, its sole remedy shall be to terminate this Agreement subject to the provisions of Paragraph 2 (C).

D. Notwithstanding anything herein to the contrary, City is not required under this Agreement to authorize Engineer to perform any services and nothing herein shall be construed as entitling Engineer to any work under this Agreement, except and to the extent such work is specifically authorized hereafter by City in a properly executed Task Order.

E. Engineer represents to City that it has expertise in the type of professional services that will be required. City's consent or approval of any services provided by Engineer in no manner or way will relieve Engineer of its obligations and duties hereunder. Additionally, City's consent or approval of any services of Engineer shall not constitute a waiver of any rights City may have pursuant to this Agreement or by law. Notwithstanding any consents or approvals by City, Engineer remains responsible for all defects, errors, omissions or inconsistencies in its services performed pursuant to this Agreement.

2. COMPENSATION AND PAYMENT:

A. The hourly rates and other factual unit costs to be used for determining compensation are set forth in Exhibit A, which is attached hereto and incorporated herein, and are to remain fixed, subject to adjustment only by the express prior written approval of City. Engineer's total compensation for the services authorized by any particular Task Order shall be set forth exclusively in that Task Order. Hourly compensation shall be determined in increments of one-tenth (1/10) of an hour.

B. In addition to its fee, if expressly authorized in the applicable Task Order, Engineer shall be reimbursed for its reasonable out-of-pocket expenses upon its submission of appropriate supporting and backup documentation reasonably acceptable to City. Engineer shall invoice City at actual costs for such authorized out-of-pocket costs including any subconsultant's compensation. Records of costs incurred under the terms of this Agreement, as well as all of Engineer's other project related documents and records, shall be maintained by Engineer and made available to City during the period of this Agreement, and for three (3) years after the final payment is made or such longer period of time as may be required by law. Copies of these documents and records shall be furnished to City without cost, and City or its agents shall be entitled to review, copy and audit all such documents and records during normal business hours. Engineer shall include a corresponding right of access, review, copying and audit by City to all project documents and records in all of Engineer's subconsultant agreements.

C. City reserves the right to direct changes to the services required of Engineer under this Agreement or any particular Task Order. Engineer will be compensated for any such changes directed or authorized by City as set forth in Section 6.

D. In the event that additional outside services are required due to unforeseen conditions, the Engineer shall:

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

2) If the services are such that registration is required to perform them, the Engineer shall select a firm that is registered in the State of Florida.

3) If the proposal is approved in writing by the City, the Engineer shall enter into a contract with the firm for the furnishing of such services in accordance with the proposal.

4) The Engineer shall submit a minimum of five (5) printed copies and one digital copy of deliverable for all required services to the City, unless otherwise directed by the City.

5) Upon approval by the City of such reports, the City shall reimburse the Engineer for the cost of such services, which cost shall not exceed 1.10 times the amount of the proposal.

6) Services rendered by the Engineer in connection with the coordination of these additional services shall be considered within the scope of the basic contract, and no additional fee shall be due the Engineer except as part of the multiplier state in immediately preceding subsection 2.D.5.

E. At the end of each month during which a Task Order shall be outstanding, Engineer shall submit a separate invoice for services rendered during that month with respect to each Task Order as follows:

- 1) Where a stipulated sum is specified, City shall pay Engineer in monthly installments based upon the percentage of satisfactory completion. In support of payment, Engineer shall submit monthly a request for payment describing the work done, percentage of completion and amount requested to be paid, all by reference to line items in the scope of services where available.
- 2) Where fees are computed on a time-incurred basis, the City shall pay Engineer monthly in arrears upon receipt of an itemized statement certified by Engineer in form and detail reasonably acceptable to City.
- 3) If authorized under the applicable Task Order, reimbursable expenses reasonably incurred shall be included in the Engineer's monthly statement of services with such supporting documentation as may be reasonably required by Owner to substantiate the reimbursable expenses.

- 4) Notwithstanding anything in the Agreement or any Task Order to the contrary, City reserves the right to withhold payment to Engineer in part or in full to the extent reasonably necessary to protect City's interests.
- 5) Engineer shall be required to provide such supporting documentation for its invoice as may be required by City.

3. **SCHEDULE:** The time schedule for Engineer's performance of the required services under any particular Task Order, shall be set forth in that Task Order.

4. **CITY'S RESPONSIBILITY:** As reasonably requested by Engineer, City shall furnish Engineer with such existing data, plans, profiles, and other information available and useful in connection with the subject Task Order that is within City's possession and can be located, which shall be returned to City upon the completion of the services to be performed by Engineer, unless such data, plans, profiles, and other data are necessary for daily operations; then such forms of information shall be promptly duplicated by Engineer and the originals returned to City. Unless otherwise noted, the Engineer shall be entitled to rely upon the accuracy and completeness of any information supplied by the City.

5. **CITY'S DESIGNATED REPRESENTATIVE:** It is understood and agreed that City designates the City Engineer or his/her designated representative to represent City in all technical matters pertaining to and arising from the work and performance of this Agreement. Provided however, neither the City Engineer nor his/her designated representative shall have the authority to authorize any verbal or written orders or instructions that would have the effect, or be interpreted to have the effect, of adjusting, modifying or changing in any way whatsoever 1) the time to complete any of Engineer's required services, 2) the amount of compensation City is obligated or committed to pay Engineer, or 3) the scope or quality of services to be provided and performed by Engineer. The City Engineer and/or his/her designated representative shall have, but not be limited to, the following responsibilities:

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

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

C. Give prompt written notice to Engineer whenever the City Engineer or his designated representative observes or otherwise becomes aware of any defects or changes necessary in the project.

6. ADDITIONAL SERVICES/CHANGES IN SCOPE:

A. As referenced in Section 2.C of this Agreement, City has retained the right to make changes to the scope of work authorized by any Task Order. Accordingly, from time to time, at City's option and in City's sole discretion, Engineer may be directed or authorized to perform additional services ("Additional Services") City deems necessary or convenient with respect to any particular Task Order that has been issued. Provided however, City will not be responsible for the costs of any Additional Services commenced by Engineer without City's express prior written approval or direction. If Engineer reasonably believes that any services required by City (including any changes directed by City) constitutes Additional Services, then Engineer shall provide prompt written notice to City of any such circumstance before commencing such services. In the event City disagrees with Engineer's notice of Additional Services and City directs Engineer to proceed with such services, Engineer must submit a written claim to City within seven (7) calendar days of City's directive to proceed. Failure to obtain either City's prior written approval for Additional Services or failure to submit a written claim within said seven (7) day period after being directed by City to proceed with services that Engineer believes constitutes Additional Services, waives Engineer's claim that it performed Additional Services and instead such services will be deemed to be part of the original services otherwise required of Engineer under the applicable Task Order. The compensation for Additional Services will be an amount mutually agreed upon or if the parties fail to reach agreement on the compensation then Engineer's compensation will be based upon the rates established in the attached Exhibit A and the actual time and out-of-pocket costs incurred by Engineer to provide such Additional Services as reasonably determined by City.

B. Engineer hereby waives all claims for consequential and indirect damages against City arising out of or relating to this Agreement.

7. TERMINATION:

A. Either party hereto shall have the right and option to terminate this Agreement as set forth in this section. City shall have the right to terminate this Agreement and any Task Order in effect, in whole or in part, without cause upon seven (7) calendar days written notice to Engineer. Engineer shall have the right to terminate this Agreement in its entirety without cause upon ninety (90) calendar days written notice to City with respect to future services and work not already authorized under any particular Task Order; provided however, any services to be performed by Engineer under a previously issued Task Order shall proceed to completion unless otherwise expressly terminated by City. Nothing in this Section shall be construed to allow Engineer to terminate any Task Order previously issued and in effect prior to Engineer's notice of termination for convenience. In the event of a termination for convenience by City, Engineer's sole and exclusive recovery against City

shall be limited to that portion of Engineer's compensation earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Engineer that are directly attributable to the termination. In the event of such termination for convenience by Engineer, Engineer's sole and exclusive recovery against City shall be limited to that portion of Engineer's compensation earned through the date of termination for work performed plus any withheld retainage. In no event shall Engineer be entitled to any other or further recovery against City, including, but not limited to, anticipated fees or profit on work not performed.

B. Engineer shall be considered in default of this Agreement and such default shall be considered cause for City to terminate this Agreement in whole or in part upon written notice to Engineer if Engineer fails to diligently, competently and timely perform any of the work, fails to cooperate with others associated with the work, or otherwise fails to perform or observe any material covenant, representation or warranty contained in this Agreement. If City determines that Engineer is in default, Engineer shall have seven (7) calendar days following receipt by Engineer of said written notice to remedy and cure the default. If such default is not remedied or cured by Engineer within those seven (7) calendar days, then City may terminate this Agreement in whole or in part. In the event of such termination by City, Engineer's sole and exclusive recovery against City shall be limited to that portion of Engineer's compensation earned through the date of termination, plus any withheld retainage; provided, however, no such amounts shall be due and payable until such time as City determines its damages as a result of such default by Engineer. City has the right to off set all damages it suffers as a result of Engineer default from any and all amounts it may owe Engineer under this Agreement and any Task Order. Further, in the event such damages exceed the amount owed Engineer, Engineer shall pay City such excess within ten (10) days of Engineer's receipt of written demand from City for such excess amount.

C. City shall be considered in default of this Agreement and such default shall be considered cause for Engineer to terminate any particular Task Order upon written notice to City if City fails to perform or observe any material covenant required of it with respect to such Task Order. In no event does Engineer have the authority to terminate any Task Order for which the subject default does not apply. If Engineer so notifies City in writing that City is in default, City shall have thirty (30) calendar days following receipt by City of said written notice to remedy and cure the default. If such default is not remedied or cured by City within those thirty (30) calendar days, then Engineer may terminate the subject Task Order. In the event of such termination by Engineer, and subject to the terms of this Agreement, Engineer shall be entitled only to the same rights and recovery provided to it as a result of a termination for convenience by City per Section 7.A above.

D. If, after notice of termination of this Agreement or any Task Order or any portion of either by City as provided for in Section 7.B above, it is determined for any

reason that City wrongfully terminated this Agreement or any Task Order or any portion of either or otherwise was not entitled to terminate for cause, then the notice of termination given pursuant to Section 7.B above shall be deemed to be the notice of termination for convenience by City provided for in paragraph 7.A above and Engineer's remedies against City shall be the same as and limited to those afforded Engineer under Section 7.A above.

E. Upon any termination and at no additional cost to City, Engineer shall deliver to City all papers, records, documents, drawings, calculations, models, and other materials in Engineer's possession or under its control arising out of or relating to this Agreement as directed by City. The delivery of all such items to City being a condition precedent to any further payment obligations of City under this Agreement. Engineer may make a copy of any or all such items for its file, at its own cost and expense.

8. TERM: Unless terminated sooner pursuant to the provisions of the "TERMINATION" clauses contained in Section 7 of this Agreement, and subject to the availability of appropriated funds, this Agreement shall take effect immediately upon its execution by the parties, and shall continue thereafter for an initial term of 4 years or the completion of all outstanding Task Orders, whichever is later; provided, however, the term of this Agreement shall be amendable and renewable by City, at its sole discretion, for two consecutive extended terms of two years each, by written notice delivered to the Engineer at least 30 days prior to expiration of the current term.

9. INDEMNIFICATION:

A. To the maximum extent permitted by law, Engineer shall defend, indemnify and hold harmless City, its officers and employees, of any and all claims, actions, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Engineer or any person employed or utilized by Engineer in the performance of services hereunder. The provisions of this Section 9 shall survive termination of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party described in this paragraph.

B. The duty to defend under this Section 9 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Engineer, City or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Engineer. Engineer's obligation to indemnify and defend under this Section 9 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against City or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. Notwithstanding

the foregoing and to the extent Engineer actually defends City and City is ultimately found responsible for such claims, City shall reimburse Engineer its defense costs, including attorneys' and expert fees, incurred by Engineer in providing a defense to City and its employees, but only to the extent of the City's culpability.

10. INSURANCE:

A. Engineer shall procure and maintain during the life of this Agreement insurance of the following types:

1) **Worker's Compensation:** For all of its employees engaged in work on a project under this Agreement. In case any employee engaged in hazardous work on a project is not protected under the Worker's Compensation Statute, Engineer shall provide Employer's Liability Insurance for the protection of such of its employees not otherwise protected under such provisions.

Coverage A - Worker's Compensation - Statutory

Coverage B - Employer's Liability - \$100,000 each accident

- \$100,000 each employee

- \$500,000 policy limit for disease

2) **General, Automobile and Excess or Umbrella Liability Coverage:** Engineer shall purchase and maintain coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies of the Insurance Services Office.

Minimum limits of \$1,000,000 per occurrence for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies (including employers liability required in the Workers Compensation Coverage section) and the total amount of coverage required.

3) **Commercial General Liability Coverage.** Coverage A shall include bodily injury and property damage liability for premises, operations, products and completed operations, independent contractors, contractual liability covering this agreement, contract or lease, broad form property damage, and property damage resulting from explosion, collapse or underground (x,c,u) exposures.

Coverage B shall include personal injury.

Coverage C, medical payments, is not required.

Engineer is required to continue to purchase products and completed operations coverage, at least to satisfy this agreement, contract or lease, for a minimum of three years beyond the CITY's acceptance of renovation or construction projects.

4) **Business Auto Liability Coverage.** Business Auto Liability coverage is

to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non ownership use.

5) **Excess or Umbrella Liability Coverage.** Umbrella Liability insurance is preferred, but an Excess Liability equivalent may be allowed. Whichever type of coverage is provided, it should be at least "following form" and shall not be more restrictive than the underlying insurance policy coverages.

6) **Additional Insurance.** The City requires the following additional type of insurance:

PROFESSIONAL LIABILITY, MALPRACTICE AND/OR ERRORS OR OMISSIONS

- **Hold Harmless**

The CITY shall be held harmless against all claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting there from arising out of performance of the agreement or contract, unless such claims are a result of the CITY's own negligence.

The City shall also be held harmless against all claims for financial loss with respect to the provision of or failure to provide professional or other services resulting in professional, malpractice, or errors or omissions liability arising out of performance of the agreement or contract, unless such claims are a result of the CITY's own negligence.

- **PROFESSIONAL LIABILITY/ERRORS OR OMISSIONS COVERAGE**

The Successful Respondent shall maintain in full force for five years from the date of the completion of the last task under the party's agreement Project Specific Professional Liability Insurance with minimum limits of \$1,000,000 per occurrence/ \$3,000,000 annual aggregate.

If a claim made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts.

Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

B. Certificates of Insurance: Prior to commencement of work on any Task Order, Engineer shall furnish to City original, current certificates of all insurance required by this

agreement, providing thirty (30) days prior written notice of any change in limits or scope of coverage, cancellation, or non-renewal. Such certificates shall contain the following wording: "SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE AMENDED IN LIMITS OR SCOPE OF COVERAGE OR CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL DELIVER THIRTY (30) DAYS PRIOR NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN." All insurance required by this agreement shall be taken out with insurers licensed to do business in Florida having an A.M. Best's rating of A-, or otherwise approved in advance in writing by City. If the insurance policies expire during the term of this Agreement, a renewal certificate shall be filed with City at least 15 days prior to the renewal date. **Certificate Holder will be addressed as the City of Panama City Beach, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address. As outlined above, the CITY is to be named as Additional Insured on General Liability and Business Auto.**

Receipt of certificates or other documentation of insurance or policies or copies of policies by the CITY, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Engineer's obligation to fulfill the insurance requirements herein.

11. NEGOTIATION DATA: Engineer hereby certifies, covenants, and warrants that hourly rates and other factual unit costs supporting the compensation provided in Exhibit A are accurate, complete, and current as of the date of negotiation.

12. OWNERSHIP OF DOCUMENTS:

A. It is understood and agreed that all documents, including detailed reports, plans and all other data in whatever form (text, graphic, digital or other electronic), prepared or obtained by Engineer in connection with its services hereunder ("Project Documents") shall always be the property of City and shall be delivered to City promptly, at Engineer's sole expense and without lien, upon City's request or termination of this Agreement by lapse of time or otherwise. Engineer hereby assigns to City all rights, including all copyrights, to the Project Documents. Engineer acknowledges and agrees that all Project Documents shall be deemed to be works made for hire, and all right, title, and interest in and to the Project Documents shall be vested in City, and Engineer will take all actions necessary to secure for City all such right, title, and interest. Engineer warrants that all materials comprising the Project Documents are original with the Project and have not been copied or derived from any other material without the express consent of the owner, proprietor, and copyright holder of that other material, and are not subject to any other claim of copyright by any other person. Engineer shall obtain any and all licenses necessary for the production and preparation of the Project Documents including, without limitation, licenses for the use of any material subject to copyright by other parties. Engineer shall assign to City any and all rights, including any copyrights, in the Project

Documents that Engineer may possess, now or in the future, and Engineer will claim no rights adverse to City in the Project Documents. As the Project Documents are completed, Engineer shall assign its copyright interest in such documents to City by executing and delivering to City the Assignment of Copyright, the form of which is attached as Exhibit C. Engineer shall execute any additional documents required by City to further evidence this assignment. Engineer, at its own expense, may retain copies of the Project Documents for its files and internal use. Engineer shall not be liable for any use by City of the Project Documents to the extent they are modified without written approval of Engineer.

B. Engineer warrants to City that it has full right and authority to grant to City all rights in the Project Documents as provided for in this Section 12. Further, Engineer hereby consents to City's use (including any use by any replacement Engineer retained by City) of the Project Documents to complete a project following any termination of Engineer hereunder or to perform any additions to or renovations of a Project.

D. When transferring data in electronic media format, Engineer makes no representation as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Engineer at the beginning of the Agreement. Because the data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. The original hard copy of the documents containing the professional Engineer's seal shall take precedence over the electronic documents.

13. WORK COMMENCEMENT/PROGRESS/DELAYS:

A. The services to be rendered by Engineer as to any particular Task Order shall commence upon execution of that Task Order and Engineer's receipt of written notice to proceed with such services from City Manager or his designee.

B. Engineer agrees to abide by the schedule for performance of the contracted services as set forth in the applicable Task Order. City will be entitled at all times to be advised in writing at its request as to the status of the work being done by Engineer, and of the details thereof. City may require specification of liquidated delay damages in a Task Order. Failure to specify liquidated delay damages in a Task Order shall not relieve Engineer of liability for delays or other damages as provided by law.

C. Notwithstanding anything in this Agreement or any Task Order to the contrary, no interruption, interference, suspension or delay in the commencement or progress of Engineer's services from any cause whatsoever, including those for which City may be responsible in whole or in part, shall relieve Engineer of its duty to perform or give rise to any right to damages or additional compensation from City. Engineer expressly acknowledges and agrees that it shall receive no damages for delay. In the event there are delays on the part of City or any applicable regulatory agencies as to the approval of any of the plans, permits and drafts of special provisions submitted by Engineer or any other delays not due to the fault or neglect of Engineer, which delay the applicable schedule completion date, Engineer's sole remedy, if any, against City shall be an equitable extension of time for such delays. Provided, however, if the delay is solely due to City's fault of neglect and the services to be provided hereunder have been delayed for a total of ninety days, Engineer's compensation shall be adjusted only to reflect the actual incremental increase in out-of-pocket costs experienced by Engineer, if any, as a result of such delays. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

D. Engineer shall maintain an adequate and competent staff of professionals and may associate with other qualified firms for the purpose of rendering services hereunder. Engineer agrees that its staff, subconsultants, and subcontractors who will perform any services for the project are subject to City's reasonable approval and must be identified in each Task Order. None of the staff, subconsultants, and subcontractors identified in a Task Order shall be removed or replaced by Engineer without City's prior written approval (such approval not to be unreasonably withheld), and if so removed shall be immediately replaced with a person or firm reasonably acceptable to City. Engineer is liable for all acts and omissions of its staff, subconsultants, and subcontractors.

14. STANDARDS OF CONDUCT:

A. Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Engineer 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 Engineer any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

B. Engineer covenants that neither it nor any of its employees presently has any interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of services hereunder.

C. Standards of Conduct-Conflict of Interest-Engineer agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313,

Florida Statutes, as it relates to work performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. Engineer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

15. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS: In the performance of its services hereunder, Engineer and all of its work product shall comply with all Federal, State, and Local laws, rules regulations and ordinances applicable to the work or payment for work thereof. Engineer shall not discriminate on the grounds of race, color, religion, sex, or national origin in its performance of work under this Agreement.

16. ASSIGNABILITY: Engineer shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of City.

17. INDEPENDENT CONTRACTOR: Engineer is and shall remain an independent contractor and not an employee of City.

18. CONTROLLING LAW AND VENUE: All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of Florida applicable to contracts made and to be performed within this state. Exclusive jurisdiction and venue to interpret or resolve any dispute under this Agreement shall lie in the State Circuit Court, Fourteenth Judicial Circuit, in and for Bay County, Florida.

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

20. ATTORNEY'S FEES: If either party is required to institute or defend against the other party any legal proceedings in connection with this Agreement, the prevailing party shall be entitled to its costs thereof, together with reasonable attorney's and paralegals' fees.

21. NO WAIVER: No waiver of any provision of this Agreement shall be effective unless made in writing, signed by the party against whom it is charged. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor of the same provision in the future. Neither the failure nor any delay by any party in exercising any right or power under this Agreement, nor any course of dealing

between or among the parties, will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

22. COOPERATION: Engineer acknowledges that the City's projects are generally a multidisciplinary effort which require cooperation and collaboration with numerous consultants, engineers, construction managers, contractors, and counsel assisting and advising City, as well as coordination with utilities, other governmental agencies and all directions from City Manager and City Engineer. Accordingly, Engineer agrees to cooperate with all such other parties to advance the best interests of City and the project.

23. MEDIATION: City and Engineer agree to attempt to resolve any dispute between them related to the interpretation or performance of this Agreement by mediation in Bay County, Florida, with a mutually acceptable, certified Florida Mediator to serve at joint expense. If the parties are unable to agree upon a mediator, either party shall request the appointment of a mediator by the Chief Judge of the Circuit Court, Fourteenth Judicial Circuit in and for Bay County, Florida. Mediation contemplated by this paragraph is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. Any settlement will require approval of City's governing board. If the parties are unable to reach a mediated settlement within ninety (90) days of the mediator's appointment, either party may terminate the settlement discussions by written notice to the other and initiate litigation. Mediation is a condition precedent to filing any law suit or commencing other legal action. Any litigation commenced in violation of this section shall be stayed pending mediation as agreed. This Section 23 shall survive termination of this Agreement.

24. PUBLIC RECORDS: The City is a public agency subject to the Florida Public Records Law expressed in Chapter 119, Florida Statutes. Accordingly, to the extent that it is determined that Engineer is acting on behalf of City as provided under Section 119.011(2) (2017) and implemented through the judicially established "totality of factors" analysis, Engineer agrees to also comply with that law, specifically including to:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- b. Upon request of the City, 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 this chapter 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 Contractor does not transfer the records to the City.

d. Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of the contract 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.

e. IF THE ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, IT IS THE ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, AND TO CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-233-5100, LYNNE.FASONE@PCBFL.GOV, 17007 PANAMA CITY BEACH PARKWAY, PANAMA CITY BEACH, FL 32413.

25. **EVERIFY:** Engineer is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all employees hired after January 1, 2021 and requiring all sub-contractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Engineer shall maintain a copy of such affidavit(s) for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Engineer, the Engineer may not be eligible for or awarded a City contract for a period of 1 year after the date of termination.

IN WITNESS WHEREOF, the parties have hereto caused the execution of these documents as of the year and date first above written.

**CITY OF PANAMA CITY BEACH,
FLORIDA**, a municipal corporation

By: _____
Drew Whitman, City Manager

ATTEST:

Lynne Fasone, City Clerk

SOUTHERN EARTH SCIENCES, INC.

WITNESS
PRINT NAME:

By: _____
Its:

WITNESS
PRINT NAME:

EXHIBIT A

HOURLY RATE AND UNIT COST SCHEDULE

EXHIBIT B

COMBINED TASK ORDER AND
NOTICE TO PROCEED

TASK ORDER NO. _____

DATE _____, 202__

Reference is made to that certain MASTER SERVICES AGREEMENT BETWEEN CITY OF PANAMA CITY BEACH AND SOUTHERN EARTH SCIENCES, INC. RELATING TO PROFESSIONAL GEOTECHNICAL ENGINEERING SERVICES dated _____, 2021, (the "Agreement"), the terms, conditions and definitions of which are incorporated herein as if set forth in full. Neither party is in breach of the Agreement.

Pursuant to the Agreement, Engineer agrees to perform the specific professional appraisal tasks set forth upon incorporated Attachment A, Scope of Services, relating to _____.

Engineer's compensation shall be paid in monthly installments as specified in the Agreement. Engineer's total compensation for the services to be provided under this Task Order shall be determined as follows:

Pursuant to the Agreement, Engineer agrees to perform the specific tasks set forth upon incorporated Attachment A, Scope of Services, relating to _____

Contractor's total compensation shall be (check one):

_____ a stipulated sum of \$ _____; or

_____ a stipulated sum of \$ _____ plus one or more specified allowances listed below which may be authorized in writing by the City Manager or his designee,

Allowance of \$ _____ for _____, and

Allowance of \$ _____ for _____; or

_____ a fee determined on a time-involved basis with a maximum cost of \$ _____:

As set forth upon incorporated Attachment B, Fee Breakdown.

If reimbursable expenses are to be paid hereunder, such expenses must be specifically AUTHORIZED AND IDENTIFIED in this section.

The parties agree that reimbursable expenses shall not exceed \$ _____.

Work shall begin on _____, 202__, and shall be substantially completed by _____, 202__. There are no additional rights and obligations related to this Task Order other than as specified in the Agreement.

Upon execution of this Task Order by both Engineer and City, Engineer is directed to proceed.

IN WITNESS WHEREOF the parties have caused these presents to be executed in their names on the date shown.

Witness:

By: _____

Its: _____

Date: _____

CITY OF PANAMA CITY BEACH, FL

By: _____

City Manager

Date: _____

ATTEST:

City Clerk

**MASTER SERVICES AGREEMENT
BETWEEN
CITY OF PANAMA CITY BEACH
AND NOVA ENGINEERING AND ENVIRONMENTAL, LLC
RELATING TO
PROFESSIONAL GEOTECHNICAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this ____ day of November, 2021, by and between **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (“City”) and **NOVA ENGINEERING AND ENVIRONMENTAL, LLC** (“Engineer”).

PREMISES

WHEREAS, City desires to have Engineer assist City with geotechnical engineering, testing and construction inspections and testing services.

Work will consist of geotechnical engineering services, including testing services, on a wide variety of projects, including geotechnical engineering to support planning and documents or the engineering design of improvements for the City’s water, wastewater, reclaimed water and stormwater systems; and environmental consulting services, including, but not limited to, Phase I and II environmental site assessments, asbestos and lead-based paint services, indoor air quality investigations and mold investigations; and materials testing services including, but not limited to, concrete and asphalt mix designs and construction inspections]. The projects shall meet the following criteria:

- A) Related to City construction projects for which construction costs to no exceed \$4,000,000, or
- B) For specific geotechnical engineering projects or study activities when the fee for such professional engineering service does not exceed \$500,000, or
- C) Related to City water, wastewater, reclaimed water and stormwater facilities and improvements which are included in the Utility Department’s then current Five (5) Year Capital Plan,

(collectively, the “Professional Services”); and

WHEREAS, the City intends this Agreement to be a cost-effective device for in-house engineering projects, and to augment City Staff in areas where specific expertise is not available, or in some cases where timely accomplishment of budgeted projects requires additional staff support; and

WHEREAS, the City desires to have two geotechnical engineers under independent, continuing master services agreements in order to have two firms to which to alternatively assign the recurring tasks; and

WHEREAS, City desires to employ Engineer for those purposes upon the terms and conditions in this Agreement, and Engineer is desirous of obtaining such employment and has represented that it is qualified and competent to perform such services upon said terms and conditions.

NOW, THEREFORE, in consideration of the following covenants, it is agreed:

1. SCOPE OF PROFESSIONAL SERVICES:

A. City retains Engineer to diligently, competently and timely perform the "Professional Services" on an as-needed basis. Upon request, Engineer will prepare a detailed, project specific scope of work for each task and phase of work to be undertaken in accordance with the general scope of services described in this agreement and in the request for statements of qualification which led to this Agreement. The proposed scope of work shall include a schedule for the work and, separately stated, a proposed fee. The proposed fee shall be a: (i) stipulated sum; (ii) stipulated sum plus one or more specified allowances which may be authorized by City Manager or his designee; (iii) a fee determined on a time-involved basis at the hourly rates specified on Exhibit A which shall include a maximum cost. Unless otherwise expressly set forth separately in the applicable fee proposal, the proposed fee shall be assumed to include all compensation which City will owe Engineer for the subject services, including all reimbursable expenses.

B. If accepted by City, the proposed scope of work shall be incorporated into a task order in materially the form attached as Exhibit B (each a "Task Order"). Each Task Order shall be numbered and dated, incorporate this Agreement and any additional terms related to that specific Task Order, and shall be signed both by the City and by the Engineer. If a term in this Agreement conflicts with a term in a Task Order, the term in the Task Order shall control to the extent of such conflict, but only for that Task Order.

C. In the event the City elects to enter, and for so long as the City keeps open this Agreement and another master services agreement in materially the form of this Agreement with a different engineering firm for the same Professional Services, the City shall assign specific tasks to Engineer and the other firm on a 1:1 alternating basis, but subject to equitable adjustments of assignments based upon the total City-generated workload in a rolling, 12 month average. The intent of the adjustments will be to keep the financial benefit of the work distributed between the firms as equal as may be practicable while still meeting the City's needs. Adjustments shall be made in the sole, unfettered discretion of the City, and Engineer agrees that if it objects to the rotation of tasks or any

adjustment made by the City, its sole remedy shall be to terminate this Agreement subject to the provisions of Paragraph 2 (C).

D. Notwithstanding anything herein to the contrary, City is not required under this Agreement to authorize Engineer to perform any services and nothing herein shall be construed as entitling Engineer to any work under this Agreement, except and to the extent such work is specifically authorized hereafter by City in a properly executed Task Order.

E. Engineer represents to City that it has expertise in the type of professional services that will be required. City's consent or approval of any services provided by Engineer in no manner or way will relieve Engineer of its obligations and duties hereunder. Additionally, City's consent or approval of any services of Engineer shall not constitute a waiver of any rights City may have pursuant to this Agreement or by law. Notwithstanding any consents or approvals by City, Engineer remains responsible for all defects, errors, omissions or inconsistencies in its services performed pursuant to this Agreement.

2. COMPENSATION AND PAYMENT:

A. The hourly rates and other factual unit costs to be used for determining compensation are set forth in Exhibit A, which is attached hereto and incorporated herein, and are to remain fixed, subject to adjustment only by the express prior written approval of City. Engineer's total compensation for the services authorized by any particular Task Order shall be set forth exclusively in that Task Order. Hourly compensation shall be determined in increments of one-tenth (1/10) of an hour.

B. In addition to its fee, if expressly authorized in the applicable Task Order, Engineer shall be reimbursed for its reasonable out-of-pocket expenses upon its submission of appropriate supporting and backup documentation reasonably acceptable to City. Engineer shall invoice City at actual costs for such authorized out-of-pocket costs including any subconsultant's compensation. Records of costs incurred under the terms of this Agreement, as well as all of Engineer's other project related documents and records, shall be maintained by Engineer and made available to City during the period of this Agreement, and for three (3) years after the final payment is made or such longer period of time as may be required by law. Copies of these documents and records shall be furnished to City without cost, and City or its agents shall be entitled to review, copy and audit all such documents and records during normal business hours. Engineer shall include a corresponding right of access, review, copying and audit by City to all project documents and records in all of Engineer's subconsultant agreements.

C. City reserves the right to direct changes to the services required of Engineer under this Agreement or any particular Task Order. Engineer will be compensated for any such changes directed or authorized by City as set forth in Section 6.

D. In the event that additional outside services are required due to unforeseen conditions, the Engineer shall:

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

2) If the services are such that registration is required to perform them, the Engineer shall select a firm that is registered in the State of Florida.

3) If the proposal is approved in writing by the City, the Engineer shall enter into a contract with the firm for the furnishing of such services in accordance with the proposal.

4) The Engineer shall submit a minimum of five (5) printed copies and one digital copy of deliverable for all required services to the City, unless otherwise directed by the City.

5) Upon approval by the City of such reports, the City shall reimburse the Engineer for the cost of such services, which cost shall not exceed 1.10 times the amount of the proposal.

6) Services rendered by the Engineer in connection with the coordination of these additional services shall be considered within the scope of the basic contract, and no additional fee shall be due the Engineer except as part of the multiplier state in immediately preceding subsection 2.D.5.

E. At the end of each month during which a Task Order shall be outstanding, Engineer shall submit a separate invoice for services rendered during that month with respect to each Task Order as follows:

- 1) Where a stipulated sum is specified, City shall pay Engineer in monthly installments based upon the percentage of satisfactory completion. In support of payment, Engineer shall submit monthly a request for payment describing the work done, percentage of completion and amount requested to be paid, all by reference to line items in the scope of services where available.
- 2) Where fees are computed on a time-incurred basis, the City shall pay Engineer monthly in arrears upon receipt of an itemized statement certified by Engineer in form and detail reasonably acceptable to City.
- 3) If authorized under the applicable Task Order, reimbursable expenses reasonably incurred shall be included in the Engineer's monthly statement of services with such supporting documentation as may be reasonably required by Owner to substantiate the reimbursable expenses.

- 4) Notwithstanding anything in the Agreement or any Task Order to the contrary, City reserves the right to withhold payment to Engineer in part or in full to the extent reasonably necessary to protect City's interests.
- 5) Engineer shall be required to provide such supporting documentation for its invoice as may be required by City.

3. **SCHEDULE:** The time schedule for Engineer's performance of the required services under any particular Task Order, shall be set forth in that Task Order.

4. **CITY'S RESPONSIBILITY:** As reasonably requested by Engineer, City shall furnish Engineer with such existing data, plans, profiles, and other information available and useful in connection with the subject Task Order that is within City's possession and can be located, which shall be returned to City upon the completion of the services to be performed by Engineer, unless such data, plans, profiles, and other data are necessary for daily operations; then such forms of information shall be promptly duplicated by Engineer and the originals returned to City. Unless otherwise noted, the Engineer shall be entitled to rely upon the accuracy and completeness of any information supplied by the City.

5. **CITY'S DESIGNATED REPRESENTATIVE:** It is understood and agreed that City designates the City Engineer or his/her designated representative to represent City in all technical matters pertaining to and arising from the work and performance of this Agreement. Provided however, neither the City Engineer nor his/her designated representative shall have the authority to authorize any verbal or written orders or instructions that would have the effect, or be interpreted to have the effect, of adjusting, modifying or changing in any way whatsoever 1) the time to complete any of Engineer's required services, 2) the amount of compensation City is obligated or committed to pay Engineer, or 3) the scope or quality of services to be provided and performed by Engineer. The City Engineer and/or his/her designated representative shall have, but not be limited to, the following responsibilities:

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

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

C. Give prompt written notice to Engineer whenever the City Engineer or his designated representative observes or otherwise becomes aware of any defects or changes necessary in the project.

6. ADDITIONAL SERVICES/CHANGES IN SCOPE:

A. As referenced in Section 2.C of this Agreement, City has retained the right to make changes to the scope of work authorized by any Task Order. Accordingly, from time to time, at City's option and in City's sole discretion, Engineer may be directed or authorized to perform additional services ("Additional Services") City deems necessary or convenient with respect to any particular Task Order that has been issued. Provided however, City will not be responsible for the costs of any Additional Services commenced by Engineer without City's express prior written approval or direction. If Engineer reasonably believes that any services required by City (including any changes directed by City) constitutes Additional Services, then Engineer shall provide prompt written notice to City of any such circumstance before commencing such services. In the event City disagrees with Engineer's notice of Additional Services and City directs Engineer to proceed with such services, Engineer must submit a written claim to City within seven (7) calendar days of City's directive to proceed. Failure to obtain either City's prior written approval for Additional Services or failure to submit a written claim within said seven (7) day period after being directed by City to proceed with services that Engineer believes constitutes Additional Services, waives Engineer's claim that it performed Additional Services and instead such services will be deemed to be part of the original services otherwise required of Engineer under the applicable Task Order. The compensation for Additional Services will be an amount mutually agreed upon or if the parties fail to reach agreement on the compensation then Engineer's compensation will be based upon the rates established in the attached Exhibit A and the actual time and out-of-pocket costs incurred by Engineer to provide such Additional Services as reasonably determined by City.

B. Engineer hereby waives all claims for consequential and indirect damages against City arising out of or relating to this Agreement.

7. TERMINATION:

A. Either party hereto shall have the right and option to terminate this Agreement as set forth in this section. City shall have the right to terminate this Agreement and any Task Order in effect, in whole or in part, without cause upon seven (7) calendar days written notice to Engineer. Engineer shall have the right to terminate this Agreement in its entirety without cause upon ninety (90) calendar days written notice to City with respect to future services and work not already authorized under any particular Task Order; provided however, any services to be performed by Engineer under a previously issued Task Order shall proceed to completion unless otherwise expressly terminated by City. Nothing in this Section shall be construed to allow Engineer to terminate any Task Order previously issued and in effect prior to Engineer's notice of termination for convenience. In the event of a termination for convenience by City, Engineer's sole and exclusive recovery against City

shall be limited to that portion of Engineer's compensation earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Engineer that are directly attributable to the termination. In the event of such termination for convenience by Engineer, Engineer's sole and exclusive recovery against City shall be limited to that portion of Engineer's compensation earned through the date of termination for work performed plus any withheld retainage. In no event shall Engineer be entitled to any other or further recovery against City, including, but not limited to, anticipated fees or profit on work not performed.

B. Engineer shall be considered in default of this Agreement and such default shall be considered cause for City to terminate this Agreement in whole or in part upon written notice to Engineer if Engineer fails to diligently, competently and timely perform any of the work, fails to cooperate with others associated with the work, or otherwise fails to perform or observe any material covenant, representation or warranty contained in this Agreement. If City determines that Engineer is in default, Engineer shall have seven (7) calendar days following receipt by Engineer of said written notice to remedy and cure the default. If such default is not remedied or cured by Engineer within those seven (7) calendar days, then City may terminate this Agreement in whole or in part. In the event of such termination by City, Engineer's sole and exclusive recovery against City shall be limited to that portion of Engineer's compensation earned through the date of termination, plus any withheld retainage; provided, however, no such amounts shall be due and payable until such time as City determines its damages as a result of such default by Engineer. City has the right to off set all damages it suffers as a result of Engineer default from any and all amounts it may owe Engineer under this Agreement and any Task Order. Further, in the event such damages exceed the amount owed Engineer, Engineer shall pay City such excess within ten (10) days of Engineer's receipt of written demand from City for such excess amount.

C. City shall be considered in default of this Agreement and such default shall be considered cause for Engineer to terminate any particular Task Order upon written notice to City if City fails to perform or observe any material covenant required of it with respect to such Task Order. In no event does Engineer have the authority to terminate any Task Order for which the subject default does not apply. If Engineer so notifies City in writing that City is in default, City shall have thirty (30) calendar days following receipt by City of said written notice to remedy and cure the default. If such default is not remedied or cured by City within those thirty (30) calendar days, then Engineer may terminate the subject Task Order. In the event of such termination by Engineer, and subject to the terms of this Agreement, Engineer shall be entitled only to the same rights and recovery provided to it as a result of a termination for convenience by City per Section 7.A above.

D. If, after notice of termination of this Agreement or any Task Order or any portion of either by City as provided for in Section 7.B above, it is determined for any

reason that City wrongfully terminated this Agreement or any Task Order or any portion of either or otherwise was not entitled to terminate for cause, then the notice of termination given pursuant to Section 7.B above shall be deemed to be the notice of termination for convenience by City provided for in paragraph 7.A above and Engineer's remedies against City shall be the same as and limited to those afforded Engineer under Section 7.A above.

E. Upon any termination and at no additional cost to City, Engineer shall deliver to City all papers, records, documents, drawings, calculations, models, and other materials in Engineer's possession or under its control arising out of or relating to this Agreement as directed by City. The delivery of all such items to City being a condition precedent to any further payment obligations of City under this Agreement. Engineer may make a copy of any or all such items for its file, at its own cost and expense.

8. TERM: Unless terminated sooner pursuant to the provisions of the "TERMINATION" clauses contained in Section 7 of this Agreement, and subject to the availability of appropriated funds, this Agreement shall take effect immediately upon its execution by the parties, and shall continue thereafter for an initial term of 4 years or the completion of all outstanding Task Orders, whichever is later; provided, however, the term of this Agreement shall be amendable and renewable by City, at its sole discretion, for two consecutive extended terms of two years each, by written notice delivered to the Engineer at least 30 days prior to expiration of the current term.

9. INDEMNIFICATION:

A. To the maximum extent permitted by law, Engineer shall defend, indemnify and hold harmless City, its officers and employees, of any and all claims, actions, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Engineer or any person employed or utilized by Engineer in the performance of services hereunder. The provisions of this Section 9 shall survive termination of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party described in this paragraph.

B. The duty to defend under this Section 9 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Engineer, City or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Engineer. Engineer's obligation to indemnify and defend under this Section 9 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against City or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. Notwithstanding

the foregoing and to the extent Engineer actually defends City and City is ultimately found responsible for such claims, City shall reimburse Engineer its defense costs, including attorneys' and expert fees, incurred by Engineer in providing a defense to City and its employees, but only to the extent of the City's culpability.

10. INSURANCE:

A. Engineer shall procure and maintain during the life of this Agreement insurance of the following types:

1) **Worker's Compensation:** For all of its employees engaged in work on a project under this Agreement. In case any employee engaged in hazardous work on a project is not protected under the Worker's Compensation Statute, Engineer shall provide Employer's Liability Insurance for the protection of such of its employees not otherwise protected under such provisions.

Coverage A - Worker's Compensation - Statutory

Coverage B - Employer's Liability - \$100,000 each accident

- \$100,000 each employee

- \$500,000 policy limit for disease

2) **General, Automobile and Excess or Umbrella Liability Coverage:** Engineer shall purchase and maintain coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies of the Insurance Services Office.

Minimum limits of \$1,000,000 per occurrence for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies (including employers liability required in the Workers Compensation Coverage section) and the total amount of coverage required.

3) **Commercial General Liability Coverage.** Coverage A shall include bodily injury and property damage liability for premises, operations, products and completed operations, independent contractors, contractual liability covering this agreement, contract or lease, broad form property damage, and property damage resulting from explosion, collapse or underground (x,c,u) exposures.

Coverage B shall include personal injury.

Coverage C, medical payments, is not required.

Engineer is required to continue to purchase products and completed operations coverage, at least to satisfy this agreement, contract or lease, for a minimum of three years beyond the CITY's acceptance of renovation or construction projects.

4) **Business Auto Liability Coverage.** Business Auto Liability coverage is

to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non ownership use.

5) Excess or Umbrella Liability Coverage. Umbrella Liability insurance is preferred, but an Excess Liability equivalent may be allowed. Whichever type of coverage is provided, it should be at least "following form" and shall not be more restrictive than the underlying insurance policy coverages.

6) Additional Insurance. The City requires the following additional type of insurance:

PROFESSIONAL LIABILITY, MALPRACTICE AND/OR ERRORS OR OMISSIONS

- **Hold Harmless**

The CITY shall be held harmless against all claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting there from arising out of performance of the agreement or contract, unless such claims are a result of the CITY's own negligence.

The City shall also be held harmless against all claims for financial loss with respect to the provision of or failure to provide professional or other services resulting in professional, malpractice, or errors or omissions liability arising out of performance of the agreement or contract, unless such claims are a result of the CITY's own negligence.

- **PROFESSIONAL LIABILITY/ERRORS OR OMISSIONS COVERAGE**

The Successful Respondent shall maintain in full force for five years from the date of the completion of the last task under the party's agreement Project Specific Professional Liability Insurance with minimum limits of \$1,000,000 per occurrence/ \$3,000,000 annual aggregate.

If a claim made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts.

Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

B. Certificates of Insurance: Prior to commencement of work on any Task Order, Engineer shall furnish to City original, current certificates of all insurance required by this

agreement, providing thirty (30) days prior written notice of any change in limits or scope of coverage, cancellation, or non-renewal. Such certificates shall contain the following wording: "SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE AMENDED IN LIMITS OR SCOPE OF COVERAGE OR CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL DELIVER THIRTY (30) DAYS PRIOR NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN." All insurance required by this agreement shall be taken out with insurers licensed to do business in Florida having an A.M. Best's rating of A-, or otherwise approved in advance in writing by City. If the insurance policies expire during the term of this Agreement, a renewal certificate shall be filed with City at least 15 days prior to the renewal date. **Certificate Holder will be addressed as the City of Panama City Beach, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address. As outlined above, the CITY is to be named as Additional Insured on General Liability and Business Auto.**

Receipt of certificates or other documentation of insurance or policies or copies of policies by the CITY, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Engineer's obligation to fulfill the insurance requirements herein.

11. NEGOTIATION DATA: Engineer hereby certifies, covenants, and warrants that hourly rates and other factual unit costs supporting the compensation provided in Exhibit A are accurate, complete, and current as of the date of negotiation.

12. OWNERSHIP OF DOCUMENTS:

A. It is understood and agreed that all documents, including detailed reports, plans and all other data in whatever form (text, graphic, digital or other electronic), prepared or obtained by Engineer in connection with its services hereunder ("Project Documents") shall always be the property of City and shall be delivered to City promptly, at Engineer's sole expense and without lien, upon City's request or termination of this Agreement by lapse of time or otherwise. Engineer hereby assigns to City all rights, including all copyrights, to the Project Documents. Engineer acknowledges and agrees that all Project Documents shall be deemed to be works made for hire, and all right, title, and interest in and to the Project Documents shall be vested in City, and Engineer will take all actions necessary to secure for City all such right, title, and interest. Engineer warrants that all materials comprising the Project Documents are original with the Project and have not been copied or derived from any other material without the express consent of the owner, proprietor, and copyright holder of that other material, and are not subject to any other claim of copyright by any other person. Engineer shall obtain any and all licenses necessary for the production and preparation of the Project Documents including, without limitation, licenses for the use of any material subject to copyright by other parties. Engineer shall assign to City any and all rights, including any copyrights, in the Project

Documents that Engineer may possess, now or in the future, and Engineer will claim no rights adverse to City in the Project Documents. As the Project Documents are completed, Engineer shall assign its copyright interest in such documents to City by executing and delivering to City the Assignment of Copyright, the form of which is attached as Exhibit C. Engineer shall execute any additional documents required by City to further evidence this assignment. Engineer, at its own expense, may retain copies of the Project Documents for its files and internal use. Engineer shall not be liable for any use by City of the Project Documents to the extent they are modified without written approval of Engineer.

B. Engineer warrants to City that it has full right and authority to grant to City all rights in the Project Documents as provided for in this Section 12. Further, Engineer hereby consents to City's use (including any use by any replacement Engineer retained by City) of the Project Documents to complete a project following any termination of Engineer hereunder or to perform any additions to or renovations of a Project.

D. When transferring data in electronic media format, Engineer makes no representation as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Engineer at the beginning of the Agreement. Because the data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. The original hard copy of the documents containing the professional Engineer's seal shall take precedence over the electronic documents.

13. WORK COMMENCEMENT/PROGRESS/DELAYS:

A. The services to be rendered by Engineer as to any particular Task Order shall commence upon execution of that Task Order and Engineer's receipt of written notice to proceed with such services from City Manager or his designee.

B. Engineer agrees to abide by the schedule for performance of the contracted services as set forth in the applicable Task Order. City will be entitled at all times to be advised in writing at its request as to the status of the work being done by Engineer, and of the details thereof. City may require specification of liquidated delay damages in a Task Order. Failure to specify liquidated delay damages in a Task Order shall not relieve Engineer of liability for delays or other damages as provided by law.

C. Notwithstanding anything in this Agreement or any Task Order to the contrary, no interruption, interference, suspension or delay in the commencement or progress of Engineer's services from any cause whatsoever, including those for which City may be responsible in whole or in part, shall relieve Engineer of its duty to perform or give rise to any right to damages or additional compensation from City. Engineer expressly acknowledges and agrees that it shall receive no damages for delay. In the event there are delays on the part of City or any applicable regulatory agencies as to the approval of any of the plans, permits and drafts of special provisions submitted by Engineer or any other delays not due to the fault or neglect of Engineer, which delay the applicable schedule completion date, Engineer's sole remedy, if any, against City shall be an equitable extension of time for such delays. Provided, however, if the delay is solely due to City's fault of neglect and the services to be provided hereunder have been delayed for a total of ninety days, Engineer's compensation shall be adjusted only to reflect the actual incremental increase in out-of-pocket costs experienced by Engineer, if any, as a result of such delays. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

D. Engineer shall maintain an adequate and competent staff of professionals and may associate with other qualified firms for the purpose of rendering services hereunder. Engineer agrees that its staff, subconsultants, and subcontractors who will perform any services for the project are subject to City's reasonable approval and must be identified in each Task Order. None of the staff, subconsultants, and subcontractors identified in a Task Order shall be removed or replaced by Engineer without City's prior written approval (such approval not to be unreasonably withheld), and if so removed shall be immediately replaced with a person or firm reasonably acceptable to City. Engineer is liable for all acts and omissions of its staff, subconsultants, and subcontractors.

14. STANDARDS OF CONDUCT:

A. Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Engineer 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 Engineer any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

B. Engineer covenants that neither it nor any of its employees presently has any interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of services hereunder.

C. Standards of Conduct-Conflict of Interest-Engineer agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313,

Florida Statutes, as it relates to work performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. Engineer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

15. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS: In the performance of its services hereunder, Engineer and all of its work product shall comply with all Federal, State, and Local laws, rules regulations and ordinances applicable to the work or payment for work thereof. Engineer shall not discriminate on the grounds of race, color, religion, sex, or national origin in its performance of work under this Agreement.

16. ASSIGNABILITY: Engineer shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of City.

17. INDEPENDENT CONTRACTOR: Engineer is and shall remain an independent contractor and not an employee of City.

18. CONTROLLING LAW AND VENUE: All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of Florida applicable to contracts made and to be performed within this state. Exclusive jurisdiction and venue to interpret or resolve any dispute under this Agreement shall lie in the State Circuit Court, Fourteenth Judicial Circuit, in and for Bay County, Florida.

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

20. ATTORNEY'S FEES: If either party is required to institute or defend against the other party any legal proceedings in connection with this Agreement, the prevailing party shall be entitled to its costs thereof, together with reasonable attorney's and paralegals' fees.

21. NO WAIVER: No waiver of any provision of this Agreement shall be effective unless made in writing, signed by the party against whom it is charged. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor of the same provision in the future. Neither the failure nor any delay by any party in exercising any right or power under this Agreement, nor any course of dealing

between or among the parties, will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

22. COOPERATION: Engineer acknowledges that the City's projects are generally a multidisciplinary effort which require cooperation and collaboration with numerous consultants, engineers, construction managers, contractors, and counsel assisting and advising City, as well as coordination with utilities, other governmental agencies and all directions from City Manager and City Engineer. Accordingly, Engineer agrees to cooperate with all such other parties to advance the best interests of City and the project.

23. MEDIATION: City and Engineer agree to attempt to resolve any dispute between them related to the interpretation or performance of this Agreement by mediation in Bay County, Florida, with a mutually acceptable, certified Florida Mediator to serve at joint expense. If the parties are unable to agree upon a mediator, either party shall request the appointment of a mediator by the Chief Judge of the Circuit Court, Fourteenth Judicial Circuit in and for Bay County, Florida. Mediation contemplated by this paragraph is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. Any settlement will require approval of City's governing board. If the parties are unable to reach a mediated settlement within ninety (90) days of the mediator's appointment, either party may terminate the settlement discussions by written notice to the other and initiate litigation. Mediation is a condition precedent to filing any law suit or commencing other legal action. Any litigation commenced in violation of this section shall be stayed pending mediation as agreed. This Section 23 shall survive termination of this Agreement.

24. PUBLIC RECORDS: The City is a public agency subject to the Florida Public Records Law expressed in Chapter 119, Florida Statutes. Accordingly, to the extent that it is determined that Engineer is acting on behalf of City as provided under Section 119.011(2) (2017) and implemented through the judicially established "totality of factors" analysis, Engineer agrees to also comply with that law, specifically including to:

a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

b. Upon request of the City, 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 this chapter 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 Contractor does not transfer the records to the City.

d. Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of the contract 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.

e. IF THE ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, IT IS THE ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, AND TO CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-233-5100, LYNNE.FASONE@PCBFL.GOV, 17007 PANAMA CITY BEACH PARKWAY, PANAMA CITY BEACH, FL 32413.

25. **EVERIFY:** Engineer is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all employees hired after January 1, 2021 and requiring all sub-contractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Engineer shall maintain a copy of such affidavit(s) for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Engineer, the Engineer may not be eligible for or awarded a City contract for a period of 1 year after the date of termination.

IN WITNESS WHEREOF, the parties have hereto caused the execution of these documents as of the year and date first above written.

**CITY OF PANAMA CITY BEACH,
FLORIDA**, a municipal corporation

By: _____
Drew Whitman, City Manager

ATTEST:

Lynne Fasone, City Clerk

**NOVA ENVIRONMENTAL
& ENGINEERING, LLC**

WITNESS
PRINT NAME:

By: _____
Its:

WITNESS
PRINT NAME:

EXHIBIT A

HOURLY RATE AND UNIT COST SCHEDULE

EXHIBIT B

**COMBINED TASK ORDER AND
NOTICE TO PROCEED**

TASK ORDER NO. _____

DATE _____, 202__

Reference is made to that certain MASTER SERVICES AGREEMENT BETWEEN CITY OF PANAMA CITY BEACH AND NOVA ENGINEERING & ENVIRONMENTAL, LLC, RELATING TO PROFESSIONAL GEOTECHNICAL ENGINEERING SERVICES dated _____, 2021, (the "Agreement"), the terms, conditions and definitions of which are incorporated herein as if set forth in full. Neither party is in breach of the Agreement.

Pursuant to the Agreement, Engineer agrees to perform the specific professional appraisal tasks set forth upon incorporated Attachment A, Scope of Services, relating to _____.

Engineer's compensation shall be paid in monthly installments as specified in the Agreement. Engineer's total compensation for the services to be provided under this Task Order shall be determined as follows:

Pursuant to the Agreement, Engineer agrees to perform the specific tasks set forth upon incorporated Attachment A, Scope of Services, relating to _____

Contractor's total compensation shall be (check one):

_____ a stipulated sum of \$ _____; or

_____ a stipulated sum of \$ _____ plus one or more specified allowances listed below which may be authorized in writing by the City Manager or his designee,

Allowance of \$ _____ for _____, and

Allowance of \$ _____ for _____; or

_____ a fee determined on a time-involved basis with a maximum cost of \$ _____:

As set forth upon incorporated Attachment B, Fee Breakdown.

If reimbursable expenses are to be paid hereunder, such expenses must be specifically AUTHORIZED AND IDENTIFIED in this section.

The parties agree that reimbursable expenses shall not exceed \$ _____.

Work shall begin on _____, 202__, and shall be substantially completed by _____, 202__. There are no additional rights and obligations related to this Task Order other than as specified in the Agreement.

Upon execution of this Task Order by both Engineer and City, Engineer is directed to proceed.

IN WITNESS WHEREOF the parties have caused these presents to be executed in their names on the date shown.

Witness:

By: _____
Its: _____
Date: _____

CITY OF PANAMA CITY BEACH, FL

By: _____
City Manager

Date: _____

ATTEST:

City Clerk