

**AGREEMENT BETWEEN
THE CITY OF DELTONA AND CPH, INC.**

THIS AGREEMENT is made and entered into this 26th day of April, 2022 by and between the CITY OF DELTONA, a municipality of the State of Florida, whose address is 2345 Providence Boulevard, Deltona, Florida 32725, hereinafter called the "City" and **CPH, Inc.**, duly authorized to conduct business in the State of Florida, whose principal address is **101 N. Woodland Blvd., Suite 305, DeLand, FL 32720**, hereinafter called the "Consultant".

WITNESSETH:

WHEREAS, the City has publicly submitted Request for Qualifications (RFQ) No. 22018 for procurement of Civil Engineering services under the Consultants' Competitive Negotiation Act, section 287.055, Florida Statutes, following the guidelines set forth under such Act; and

WHEREAS, per Florida Statute 287.055, "Consultants Competitive Negotiation Act" for continuing contracts and the City's Procurement Policy, firms shall provide professional services to the City for projects in which construction costs do not exceed \$4,000,000 and for study activity that does not exceed \$500,000. City limits shall remain the same unless the City's Procurement Policy changes.

WHEREAS, RFQ No. 22018 did seek firms or individuals qualified to provide Continuing On-Call Civil Engineering Services; and

WHEREAS, the Engineer desires to perform such services subject to the terms of this Agreement; and

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, premises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

Article 1. Recitals

1.1 The foregoing recitals are true and correct and incorporated herein by reference.

Article 2. Scope of Professional Services

2.1 Pursuant to the terms and conditions set forth in this Agreement, City hereby engages Engineer to provide Professional Continuing On-Call Civil Engineering Services related to RFQ# 22018 attached hereto and incorporated herein by reference. The Engineer acknowledges and agrees that if the work is assigned to the Engineer, each individual project shall have a specific Scope of Services agreed to by the parties and a task order shall be executed by both parties. The task order shall include all necessary provisions including, but not limited to, setting forth the time for payment, deliverables, electronic and printed formats and any other items relevant to the task. The task order shall be signed by the parties prior to the Engineer performing any of the agreed upon work. All task orders shall be reviewed and approved by the City in writing prior to the Engineer beginning any work on the assigned project or payment being made to the Engineer.

2.2 The Engineer shall coordinate, cooperate, and work with any other Engineer retained by the City. Engineer acknowledges that nothing herein shall be deemed to preclude the City from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the Engineer or from independently developing or acquiring materials or programs that are similar to or competitive with, the services provided under this Agreement.

2.3 Engineer shall be responsible for obtaining all required federal, state or local permits required to complete the scope of work under this agreement. Additionally, the Engineer shall be responsible for the removal of all surplus material and debris occurring from this work if the materials or debris was generated as a result of the Engineer's work. The Engineer shall take precautions against damage to public and private property during the course of its work. Should damage occur, by negligent omission or commission by the Engineer, the Engineer shall, at its own expense, restore damaged property to a condition similar or equal to that existing before damage was done. In the event Engineer fails to correct the damage, the City shall have the option of correcting the damage and issuing a deductive change order to the Engineer to deduct the amount of the corrective work from the contract balance.

2.4 The Engineer agrees that this shall be an open contract to be used on an as needed basis. The City does not guarantee to the Engineer any minimum amount of work throughout the term of this Agreement. Furthermore, Engineer agrees and acknowledges that in the event Engineer cannot meet the City's specifications including, but not limited to, time for completion and cost for individual project, the City reserves the sole right to offer the individual project to the City's alternate firm(s).

2.5 Since this is a continuing contract under the provisions of section 287.055, Florida Statutes, each individual project authorized by the City shall not exceed the thresholds for continuing contracts under Florida Statutes.

2.6 This agreement shall be effective for the three (3) year period immediately following the date of execution of the Agreement by the City. The City reserves the sole right to renew this Agreement in writing for two (2) additional twelve (12) month periods to the expiration of each term. Labor prices for contract renewal shall be determined on an annual basis based upon the percentage change in the Consumer Price Index for the South Urban MSA. The base period shall be the month in which this Agreement was executed by the City.

Article 3. Payment

3.1 Payment shall be based upon the hourly billing rates set forth in Exhibit A, attached hereto and incorporated herein by reference. The personnel needed for each individual project shall be determined once the Engineer receives the Task Assignment Sheet. Upon reviewing the project specific scope of services, the Engineer shall submit a list of specific tasks to be performed as part of the project, including any alternate tasks, and a detailed estimated cost sheet. A list of deliverables shall also be provided. The Engineer and City hereby agree that the hours of service set forth in the cost sheet are projected hours of service and that the Engineer's actual time may be more or less than the budgeted hours. If work is accepted, the City shall pay the Engineer only for the total fee agreed upon for each project.

3.2 Invoices shall be submitted in duplicate to the City of Deltona, Accounts Payable, 2345 Providence Blvd., Deltona, FL 32725 or by electronic email to accountspayable@deltonafl.gov. Each invoice shall contain the purchase order number and a detailed description of services and fees.

3.3 The City shall make payment on all invoices in accordance with the Florida Prompt Payment Act, sections 218.70 through 218.79, Florida Statutes.

3.4 Engineer shall submit invoices at the end of each month documenting the percent of completion of each task and requesting payment based upon such percent completion. Alternative billing arrangements may be negotiated on a per project basis, depending on the size and scope of the project, i.e., monthly billing. Alternative billing provisions shall be expressly stated in the task order authorizing the work.

3.5 Other than the common expenses, travel expenses, administrative and technical support expenses and computer expenses as set forth in Exhibit A, the Engineer shall not be entitled to payment for any other expenses, fees, or other costs it may incur at any time and in any connection with its performance hereunder. The Engineer hereby agrees that its hourly billing rates are fully loaded and include all overhead and administrative expenses.

3.6 In the event a specific project is to be funded by State or Federal monies, the Engineer hereby agrees to comply with all requirements of the state or federal government applicable to the use of the monies, including receiving no payment until all required forms are completed, submitted, and approved by the City.

Article 4. City Responsibilities

4.1 City shall promptly review the deliverables and other materials submitted by Engineer and provide direction to Engineer as needed. City shall designate one City staff member to act as City's Project Administrator and/or Spokesperson.

4.2 The City will provide to the Engineer all necessary and available GIS data, data developed and/or within the possession of the City, and any other data the City possesses that would be useful to the Engineer in the completion of the required services.

4.3 The City shall reimburse Engineer, in accordance with the provisions of Article 3 above, for required services timely submitted and approved by City in accordance with the terms of this Agreement.

Article 5. Special Terms and Conditions

5.1 Qualifications. Firms or individuals shall be registered with the State of Florida and have obtained at least the minimum thresholds of education and professional experience required by Florida Statutes to perform the services contained herein.

5.2 Termination. This Agreement may be terminated by the City upon thirty (30) days advance written notice to the other party; but if any work is in progress but not completed as of the date of termination, then this Agreement may be extended upon written approval of the City until said work is completed by the Engineer and accepted by the City.

- A. Termination for Convenience. In the event this Agreement is terminated or cancelled upon the request and for the convenience of City, City shall reimburse Engineer for actual work satisfactorily completed.
- B. Termination for Cause. If the termination of this Agreement is due to the failure of the Engineer to fulfill his contractual obligations, City shall reimburse Engineer for actual work satisfactorily completed, and City may take over the work and prosecute the same to completion by Agreement or otherwise.
- C. In the event of termination of this Agreement, all work, reports, designs, drawings, renderings and other work product produced by Engineer in connection

with the project shall be returned to the City and become and remain the property of the City. Engineer shall not use any part thereof without written consent of the City.

5.3 Subletting of Contract. No part of this Agreement shall be sublet except with the written consent of the City Manager or designee. No such consent shall be construed as making the City a party to the subcontract or subjecting the City of liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Engineer of liability and obligations under this Agreement. All subcontractors shall be notified of same when hired by Engineer.

5.4 Insurance and Bond. Contractor/Engineer shall provide and maintain, during the entire term of this Agreement, without cost to the City, insurance in the following types and limits with a company or companies authorized to do business in the State of Florida and rated "Class A" or better by A. M. Best or some other form of assurance approved by the City's Risk Manager. Contractor/Engineer shall not commence work under the Agreement until City has received an acceptable certificate or certificates of insurance and endorsement evidencing the required insurance, which is as follows:

A. Professional liability (medical malpractice, engineers, architect, environmental, errors and omissions, etc.) insurance as applicable, with minimum limits of \$1,000,000. Professional liability insurance shall be maintained for at least one year from the termination of the Agreement.

(B) General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01 or CG 00 02) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage limits fully available during the entire contract period:

General Liability	
Each Occurrence/General Aggregate	\$5,000,000
Products-Completed Operations	\$1,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	

(C) Automobile liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$3,000,000
Or	
Bodily Injury (per person)	\$1,000,000

Bodily Injury (per accident)	\$1,000,000
Property Damage	\$500,000

(D) Workers' compensation insurance in accordance with Florida Statute, Chapter 440, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.)

(E) Additional Requirements:

(1) **City of Deltona shall be named and endorsed as an additional insured on the General liability policy.**

(2) The General Liability policy is to contain or be endorsed to name the City, its officers, officials and employees as additional insureds as respects to the liability arising out of the activities performed under this Agreement. Such coverage shall be primary to the extent of Contractors negligent acts or omissions or willful misconduct, and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. In addition, a waiver of subrogation by the commercial liability insurer shall be provided that lists or names the additional insured as subject to the waiver. Coverage shall be on an "occurrence" basis and not "claims made".

(3) Certificates of insurance shall provide for a minimum of thirty (30) days prior written notice to the City of any material change or cancellation of the required insurance, with ten (10) day written notice of cancellation due to non-payment of premium.

(4) Certificates of insurance shall identify the RFQ number, contract, project, etc. in the Description of Operations section of the Certificate.

(5) Professional liability (medical malpractice, engineers, architect, environmental, errors and omissions, etc.) insurance as applicable, with minimum limits of \$1,000,000. Professional liability insurance shall be maintained for at least one year from the termination of the Agreement.

(6) The Certificate holder section of each policy shall state: City OF DELTONA, 2345 PROVIDENCE BOULEVARD, DELTONA, FLORIDA 32725.

(7) Engineer shall be solely responsible for all deductibles and self-insurance retention on Engineer Liability Insurance policies. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the

coverage afforded shall not be canceled, materially changed or renewal refused without thirty (30) calendar days written notice, or without ten (10) days written notice of cancellation due to non-payment of premium, being given to City by certified mail.

5.5 Indemnity. Engineer shall indemnify and hold City and its officers, commission, or employees harmless for direct damages resulting from failure of Engineer to take out and maintain the above insurance. Additionally, Engineer agrees to indemnify, and hold the City, and its officers, commission, and employees free and harmless from and against losses, penalties, direct damages, settlements, costs, charges, professional and reasonable attorney fees, court costs, other expenses and liabilities to the extent caused by negligent act, error or omission of Engineer, employees or representative, in the performance of Engineer's duties set forth in this Agreement.

5.6 Independent Contractor. Engineer agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of City. Engineer shall have no authority to contract for or bind City in any manner and shall not represent itself as an agent of City or as otherwise authorized to act for or on behalf of City.

5.7 Ownership of Deliverables.

(a) Title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, reports or other tangible work product produced by Engineer pursuant to this Agreement shall be and remain the sole and exclusive property of City when produced. Engineer shall deliver all such original work product to City upon completion thereof unless it is necessary for Engineer, in City's sole discretion to retain possession for a longer period of time.

(b) City exclusively retains all manufacturing rights to all materials or designs developed under this Agreement. To the extent the services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for City as the author, creator, or inventor thereof upon creation, and City shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. Engineer hereby assigns to City any and all rights Engineer may have including, without limitation, the copyright, with respect to such work. The Engineer acknowledges that City is the motivating factor for and for the purpose of copyright or patent has the right to direct and supervise the preparation of such copyrightable or patentable materials or designs.

(c) The documents, reports, plans, plats, and similar materials provided or created by Engineer are public records and Engineer shall abide by applicable requirements of Florida law. Engineer shall notify the City within 24 hours of receiving the request to release the information

concerning the subject project to a member of the media and/or to the public. The City's notification shall to the extent possible provide the name, date, time and type of information requested to be released prior to the Engineer's release or disclosure of information to the media or to the public.

5.8 Return of Materials. Upon the request of the City, but in any event upon termination of this Agreement, Engineer shall surrender to the City all memoranda, notes, records, drawings, manuals, computer software, and other documents or materials pertaining to the services hereunder, that were furnished to the Engineer by the City pursuant to this Agreement. Engineer may keep copies of all work products for its records.

5.9 **NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the work from any cause whatsoever, shall relieve the Engineer of his duty to perform or give rise to any right to damages or additional compensation from the City. The Engineer expressly acknowledges and agrees that the Engineer shall receive no damages for delay. The Engineer's sole remedy, if any, against the City shall be the right to seek an extension to the contract time.

5.10 Retaining Other Engineers. Nothing herein shall be deemed to preclude the City from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the Engineer or from independently developing or acquiring materials or programs that are similar to or competitive with, the services provided under this Agreement.

5.11 Accuracy. The Engineer is responsible for the professional quality, technical accuracy, timely completion and coordination of all the services furnished hereunder. The Engineer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, reports or other services.

5.12 Codes and Regulations. All work completed under this Agreement shall at all times comply with all applicable federal, state and local statutes, codes, regulations and ordinances.

5.13 Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or engineer under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

5.14 Prohibition against Contingent Fees. Engineer warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Engineer to solicit or secure this Agreement and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

5.15 Public Records. The Contractor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Agreement. Specifically, the Contractor shall:

- (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's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in state law 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 Agreement and destroy and duplicate public records that are exempt or confidential and exempt from the public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology system of the City.

(e) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (386) 878-8100, jraftery@deltonafl.gov, 2345 Providence Blvd., Deltona, Florida 32725.

5.16 E-VERIFY REQUIREMENTS

Definitions:

“Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

“Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

Effective January 1, 2021, public and private employers, contractors and subcontractors will begin required registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Vendor/Consultant/Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of:

- a) All persons employed by Vendor/Consultant/Contractor to perform employment duties within Florida during the term of the contract; and
- b) All persons (including sub-vendors/sub-consultants/subcontractors) assigned by Vendor/Consultant/Contractor to perform work pursuant to the contract with the Department. The Vendor/Consultant/Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security’s E-Verify System during the term of the contract is a condition of the contract with the City of Coconut Creek; and
- c) *Should vendor become successful Contractor awarded for the above-named project, by entering into this Contract, the Contractor becomes 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 newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The contractor shall maintain a copy of such affidavit 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 Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.*

Article 6. General Conditions

6.1 This Agreement is made under, and in all respects shall be interpreted, construed, enforced, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie solely in Volusia County, Florida.

6.2 Neither Party may assign any rights or obligations under this Agreement to any other party unless specific written permission from the other party is obtained.

6.3 The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.

6.4 This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns.

6.5 This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.

6.6 The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

6.7 During the term of this Agreement Engineer assures City that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that Engineer does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discriminated in any form or manner against Engineer employees or applicants for employment. Engineer understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.

Article 7. Severability and Notice

7.1 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

7.2 Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

If to Consultant:
David A. Gierach, President
CPH, Inc
101 N. Woodland Blvd. Suite 305
DeLand, FL 32720

If to City:
John A. Peters, III
Acting City Manager
City of Deltona
2345 Providence Blvd.
Deltona, Florida 32725

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

Article 8. Scope of Agreement

8.1 This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.


8.2 This Agreement consists of the following:

- This Agreement
- Notice of Award
- RFQ Documents
- Addendum, if any
- Consultant's Proposal

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IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.


ATTEST:



Secretary

(CORPORATE SEAL)

CONSULTANT:



David A. Gierach, President

4-22-2022

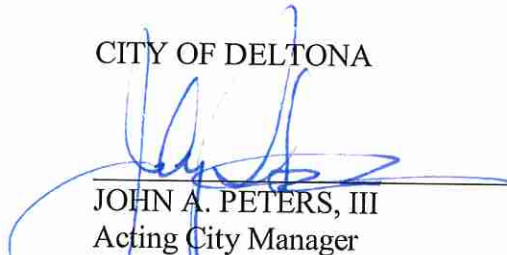
Date

ATTEST:



JOYCE RAFTERY
City Clerk

CITY OF DELTONA

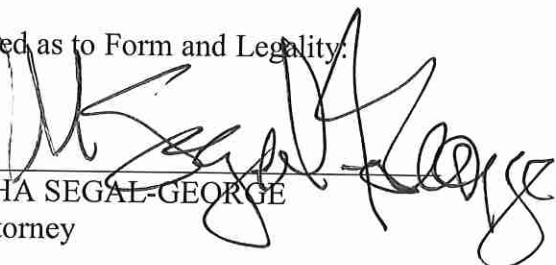


JOHN A. PETERS, III
Acting City Manager

4/26/22

Date

Approved as to Form and Legality:



MARSHA SEGAL-GEORGE
City Attorney