

9274-01

**AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE
AND
ENVIRONMENTAL RESOURCE SOLUTIONS, INC.
FOR
WETLANDS IDENTIFICATION, MITIGATION AND PERMITTING**

THIS AGREEMENT is made and entered into in duplicate this 13 day of Dec., 2013, by and between the CITY OF JACKSONVILLE (hereinafter the "CITY"), a municipal corporation in Duval County, Florida, and ENVIRONMENTAL RESOURCE SOLUTIONS, INC. (hereinafter the "CONSULTANT"), a Florida profit corporation with an office at 8711 Perimeter Park Boulevard, Suite 1, Jacksonville, Florida 32216, for wetlands identification, mitigation, and related permitting activities (hereinafter the "Project").

RECITALS:

WHEREAS, the CITY prepared a Request for Proposals (P-14-11) for the Project and solicited proposals from interested firms; and

WHEREAS, the CONSULTANT submitted a proposal to the CITY and was selected by the CITY as the best and most qualified applicant; and

WHEREAS, the CITY and the CONSULTANT have negotiated mutually satisfactory terms for the execution of such services; now therefore

IN CONSIDERATION of the premises and of the mutual covenants and agreements hereinafter contained, the CITY hereby engages the CONSULTANT for Professional Services for the Project in accordance with the following:

SECTION O

0.1 INCORPORATION OF RECITALS

The above stated recitals are true and correct and by this reference are incorporated herein and made a part hereof.

SECTION I BASIC SERVICES OF THE CONSULTANT

1.01 STATEMENT OF CONSULTANT SERVICES

The CONSULTANT shall furnish all services, documents, drawings, and other matters called for in this Agreement, as well as those contained in the "Scope of Services", attached hereto as **Exhibit A** and by this reference made a part hereof. If any services, functions, or responsibilities not specifically described in this Agreement and/or the Scope of Services are necessary for the proper performance and provision of the Services, they shall be deemed to be implied by and included within the Scope of Services to the same extent and in the same manner as if specifically described in this Agreement. The Contractor shall be responsible for providing the equipment, supplies, personnel (including management, employees, and training), and other resources as necessary to provide the Services. The CONSULTANT accepts the special relationship established between itself and the CITY by this Agreement. The CONSULTANT covenants with the CITY that it is an expert in the design of the Project and will cooperate with Program Managers, Construction Managers, CITY representatives, and others in fostering the interests of the CITY. The CONSULTANT shall employ sound business administration and superintendence to complete the Project in a manner consistent with the best interests of the CITY.

1.02 PERIOD OF SERVICE

This Agreement shall commence on the day and year first above written and shall continue and remain in full force and effect thereafter for one (1) year until September 30, 2014, or earlier termination as provided in Section 5.1 hereof. This Agreement may be renewed for two (2) additional one (1) year periods upon provisions, terms, and conditions mutually agreeable to the parties.

1.03 COMMENCEMENT OF WORK

1.03.01 The CONSULTANT shall not commence work on the Project without a prior written Notice to Proceed issued by the CITY.

1.03.02 The giving of a written Notice to Proceed shall be a condition precedent to any liability attaching to the CITY, whether under the terms of this Agreement or otherwise. As part of the consideration for the execution of this Agreement, the CONSULTANT hereby releases the CITY from any claims for damages, whether in contract, tort, or otherwise in the event that no Notice to Proceed is ever issued pursuant to this Agreement.

1.04 GENERAL REQUIREMENTS

The CONSULTANT shall serve as the CITY's professional representative on the Project and shall consult with the CITY during the performance of its services. The CONSULTANT warrants that it now has or will secure at its own expense all personnel and facilities required to perform all services under this Agreement. The CONSULTANT shall not have any direct or indirect contractual relationship with any officer or employee of the CITY which will conflict with its ability to perform hereunder. All personnel assigned to the work shall be fully qualified and all facilities employed shall be adequate for the work required. The CONSULTANT shall prosecute the work under the full-time direction of one or more of its senior officers or a responsible representative who shall be acceptable to the CITY. The CONSULTANT shall designate in

writing to the CITY such representative who shall be authorized to act on behalf of the CONSULTANT on any matter covered by this Agreement.

1.04.01. All services performed by the CONSULTANT shall be executed in cooperation and coordination with the CITY through its Project Manager, and in the performance of such services the CONSULTANT shall:

1.04.01.01. Maintain close liaison and cooperation with the CITY during performance of the work hereunder to obtain agreement and coordination of the various phases of work contained herein.

1.04.01.02. Attend all meetings and conferences as arranged and required by the CITY during the progress of the work hereunder in order to establish Project criteria, to review CITY and State standards, to secure agreement upon the comprehensive and detailed basis of the CONSULTANT's services, and to discuss any other matters relating to the work.

1.04.01.03. Provide the CITY with written memoranda to confirm and record the understandings and agreements resulting from meetings and conferences related to the Project.

1.04.01.04. Provide the CITY with schedules, including starting dates and contemplated completion dates, for the work hereunder and periodic progress reports, such schedules and progress reports being in format and detail as the CITY may require.

1.04.01.05. Provide progress updates as required by the Project Manager.

1.04.02. In addition to Project delivery requirements otherwise specified, the CONSULTANT shall deliver all final drawings to the CITY in electronic form using either a standard .dxf or .dwg format and in layers as prescribed by the CITY's Project Manager. Further,

all survey data and other horizontal control and location shall be referenced to State Plane Coordinates, NAD 83, and all vertical control and elevations shall be referenced to National Geodetic Vertical Datum (NGVD).

1.05. STUDY (CONCEPTUAL DESIGN) PHASE

If the Study (Conceptual Design) Phase is included under Section 3 hereof, the CONSULTANT shall:

1.05.01. Consult with the CITY to determine the CITY's requirements for the Project and to establish general design criteria and standards for use on the Project.

1.05.02. Review and study any reports, documents, or studies previously prepared by and/or for the CITY.

1.05.03. Coordinate services performed by sub-consultants and act as the CITY's technical representative in connection therewith.

1.05.04. Interpret and evaluate information obtained from such data and other investigations.

1.05.05. Evaluate information on conditions to be encountered at the site essential for design and construction purposes and investigate all reasonably available information necessary to accurately indicate existing and proposed locations of underground utilities and facilities.

1.05.06. Review the provisions of Part 12, Zoning Code (Landscape and Tree Protection Regulations) and determine possible impacts on the Project. A tree survey is not required during this phase.

1.05.07. Prepare a study/conceptual design and a preliminary cost estimate and submit copies thereof to the CITY as may be required by the Scope of Services, attached hereto as **Exhibit A**.

1.05.08. Assist the CITY by preparing for and conducting a Town Meeting at the end of the Study Phase.

1.06 FINAL DESIGN (CONSTRUCTION DOCUMENTS AND BIDDING) PHASE

If the Final Design (Construction Documents and Bidding) Phase is included under Section 3 hereof, the CONSULTANT shall:

1.06.01. Prepare surveys, including location of trees and other investigations as needed for the design of the Project, and verify as to accuracy, reliability, and margin of error before any design work commences.

1.06.02. Submit maps or site plans of real property which identify all parcels of land or easements to be acquired along with a legal description of each such parcel not later than 60% submittal stage.

1.06.03. Prepare engineering data and required engineering documents in order to make application for all regulatory permits, including tree removal and replacement, and actively pursue permits and approvals from such authorities as have jurisdiction over the Project.

1.06.04. Prepare and furnish design and construction documents as required by the Scope of Services to the City for review and approval. Any changes, refinements, or modifications which the CITY may require after each review shall be completed prior to proceeding further with design and construction documents.

1.06.05. Each submittal shall contain a statement signed by the Engineer that the Engineer has reviewed and agrees with the information submitted from the Engineer's subconsultants.

1.06.06. Advise the CITY of any adjustment of the cost estimate for the Project caused by changes in scope, design requirements, construction costs, or other matters and furnish a revised cost estimate for the Project based on such.

1.06.07. Upon approval by the CITY of 90% construction documents, prepare for incorporation in the Contract Documents final construction drawings and plans (hereinafter the "Drawings") to show work to be performed by contractors on the Project and technical provisions (hereinafter the "Specifications"). Final drawings as required by the Scope of Services with budget cost estimates and supporting documents shall be prepared by the CONSULTANT and submitted to the CITY for its approval. A proposed complete draft of Specifications, as required by the Scope of Services, shall be prepared by the CONSULTANT and submitted to the CITY for its approval. All unit priced bid quantities submitted shall be signed and sealed for accuracy.

1.06.08. After approval of all Drawings and Specifications by the CITY, the CONSULTANT shall produce, assemble, and deliver to the CITY Drawings and Specifications as required by the Scope of Services, together with three (3) copies of the CONSULTANT's cost estimate and the original documents if contract administration is not to be performed by the CONSULTANT.

1.06.09. Assist the CITY concerning interpretation of the intent of the Contract Documents during the bidding/negotiation period.

1.06.10. Evaluate all bids submitted, including without limitation compliance with Specifications, costs, ability of the bidder to perform the work, and other factors.

1.06.11. Recommend to the CITY the lowest responsible bidder.

1.06.12. At the CITY's option and at no additional cost to the CITY, modify the Drawings and Specifications so as to reduce the cost of the Project to not more than an amount approved by the CITY if the lowest responsible bid for the Project exceeds the CONSULTANT's latest cost estimate as approved by the CITY. All such modifications shall be subject to the approval of the CITY. Following such approval, the CONSULTANT shall assist the CITY in rebidding the Project at no additional cost to the CITY.

1.07. CONTRACT ADMINISTRATION PHASE

If the Contract Administration Phase is included under Section 3 hereof, the CONSULTANT shall:

1.07.01. Represent the CITY as its Contract Administrator, including without limitation interpreting Drawings and Specifications and issuing instructions to the contractor performing construction work.

1.07.02. Make periodic visits to the Project site for not less than four hours every week unless specified otherwise while actual construction is in progress at intervals appropriate to the various stages of construction as the CONSULTANT, as an experienced and qualified design professional, deems necessary in order to observe and determine if the work is proceeding in substantial accordance with the Contract Documents. On the basis of such on-site visits, the CONSULTANT shall endeavor to protect the CITY against defects and deficiencies in the work and shall, within one week following each visit, submit a written report to the CITY detailing the CONSULTANT's observations and advising of any work observed that fails to conform to the

Contract Documents or which appears to be deficient, defective, or otherwise not in accordance with good engineering or construction practices. The CONSULTANT shall take reasonable steps necessary to require that the contractor corrects such work at the contractor's expense.

1.07.03. Check all shop drawings, diagrams, illustrations, brochures, catalog data, schedules, samples, the results of tests and inspections, and other data which the contractor is required to submit for the purpose of verifying acceptability in accordance with the requirements and information given in the Contract Documents, and assemble maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection as required in construction contracts related to the Project.

1.07.04. Based on CONSULTANT's on-site observations as an experienced and qualified professional and on its review of the contractor's applications for payment and supporting data, recommend to the CITY approval or disapproval of the contractor's applications for payment.

1.07.05. Make an inspection to determine if the Project is substantially complete, and a final inspection to determine if the Project has been fully completed in substantial accordance with the Contract Documents and whether the contractor has fulfilled all of its obligations thereunder so that the CONSULTANT may recommend approval in writing of final payment to the contractor.

1.07.06. Receive, review, and approve Record drawings prepared by the contractor for compliance with the requirements of the Contract Documents.

1.07.07. Take all steps necessary for the finalization of Record drawings within the one-month period following the date of final acceptance of the Project by the CITY. Such period includes the time required by the contractor to prepare, check, and submit its Record construction

data and deliver same to the CONSULTANT to review, approve, and forward Record as-built drawings to the CITY. Should said as-built drawings not be approved by the CITY, the CONSULTANT shall take whatever steps are necessary to correct the as-built drawings and resubmit them to the CITY until such are approved.

1.07.08. Participate in and conduct a warranty inspection eleven (11) months after the Project has been completed.

1.08. RESIDENT PROJECT REPRESENTATION

If Resident Project Representation is included under Section 3 hereof, the CONSULTANT shall furnish not less than one Resident Project Representative on the Project site at all times that construction work is in progress to observe and inspect the work in order to further protect the CITY from defects and deficiencies in such work and to better determine that the work is proceeding in accordance with the Contract Documents.

1.09. TECHNICAL SUPPORT SERVICES DURING CONSTRUCTION

If Technical Support Services During Construction is included under Section 3 hereof, the CONSULTANT shall:

1.09.01. Review shop drawings, diagrams, illustrations, brochures, catalog data, schedules, samples, the results of tests and inspections, and other data which the contractor is required to submit for the purpose of verifying acceptability in accordance with the requirements given in the Contract Documents.

1.09.02. Make periodic visits to the Project site during construction as requested by the Project Manager, provide written reports when requested, and participate in Substantial Completion, Final Completion, and Eleven (11) Month Warranty Inspections when requested.

1.09.03. Provide technical assistance to the CITY when requested.

SECTION 2
THE CITY'S RESPONSIBILITIES

The CITY shall:

- 2.01. Advise as to its requirements for the work.
- 2.02. Assist the CONSULTANT by placing at its disposal all available information pertinent to the site of the work which the CITY may have.
- 2.03. Make reasonable efforts to obtain access on both public and private land as necessary for the CONSULTANT to perform its work under this Agreement.
- 2.04. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the CONSULTANT and render written decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT. The CITY's review of any documents prepared by the CONSULTANT shall be solely for the purpose of determining whether such documents are generally consistent with the CITY's construction program and intent. No review of such documents shall relieve the CONSULTANT of its ultimate responsibility for the accuracy, adequacy, fitness, suitability, and coordination of its work product.
- 2.05. Advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all costs incident thereto.
- 2.06. Provide such legal, accounting, and insurance counseling services as may be required for the work, and such auditing services as the CITY may require for its own benefit.
- 2.07. Designate in writing a person to act as the CITY's Project Manager with respect to the work to be performed under this Agreement who shall have complete authority to transmit instructions, receive information, and interpret and define the CITY's policies and decisions with respect to the work covered by this Agreement.

2.08. Assist the CONSULTANT in securing approval of all governmental authorities having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the work.

2.09. Furnish or direct the CONSULTANT to provide at the CITY's expense any necessary additional services in connection with the work that may be required by the CITY, provided that any such direction shall be given by the CITY to the CONSULTANT in writing and shall provide a maximum indebtedness for such services.

**SECTION 3
PAYMENT FOR SERVICES OF THE CONSULTANT**

3.01. The CITY shall pay to the CONSULTANT in increments proportional to satisfactory completion and as actually, timely, and faithfully rendered:

3.01.01. For Services, as specified in Section 1 of this Agreement and as described in **Exhibit A**, the fees detailed in the Contract Fee Summary, attached hereto as **Exhibit B** and by this reference made a part hereof. Payment of the fees is contingent upon CONSULTANT's final completion of the work authorized by Notices to Proceed in the form of individual purchase orders with not-to-exceed amounts applicable thereto as specified in this Agreement and in the exhibits attached hereto which constitute the Scope of Services. Such completion of the work must be acceptable to and accepted by CITY. Such acceptability to, and acceptance by, CITY may not be unreasonably denied.

3.02. RESERVED.

3.03. The CONSULTANT shall submit invoices for payment or reimbursement under this subsection on an "as incurred" basis. Such invoices shall be combined with the CONSULTANT's regular invoices as set forth in Subsection 3.04 hereof. The cost of services

provided by the CONSULTANT shall be paid at the rates (including direct labor, indirect costs, and profit) shown in the "Contract Fee Summary Format". The cost of services provided to the CONSULTANT by others shall be reimbursed at the invoiced amount without markup by CONSULTANT. Travel expenses, if provided for as a reimbursable expense in **Exhibit B**, shall be reimbursed only to the extent provided by Chapter 106, Part 7, *Ordinance Code*. Travel expenses not specifically covered by said chapter shall be reimbursed only to the extent provided by the uniform policies and practices of the CITY.

3.04 The CONSULTANT shall submit written invoices not more often than monthly in such form and containing such documentation as reasonably required by the CITY's Project Manager in order to establish charges and to enable compensation therefor by the CITY as soon as practicable upon receipt, review, and approval of each such invoice. Each such invoice shall include the amount of payment requested, the amount previously paid, the total contract value, the percent completed since the last invoice, the total percent completed to date, and any other such information as may be reasonable and necessary to secure the written approval of the invoice by the CITY's Project Manager. Each invoice shall contain a statement that it is made subject to the provisions and penalty of Section 837.06, Florida Statutes.

3.05. Each and every payment by the CITY to the CONSULTANT shall be expressly subject to the submittal of written invoices as provided in Section 3.03.

3.06. This Agreement is a continuing contract. The City does not guarantee any work or any quantities to CONSULTANT under this Agreement; accordingly, the parties agree that CITY's financial obligation under this Agreement is ZERO AND 00/100 DOLLARS (\$0.00). Financial obligations of the CITY, if any, and encumbrances of lawfully appropriated funds shall be created by subsequent purchase orders in variable amounts subject to a limit up to but not-to-

exceed a maximum indebtedness of TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00). Such purchase orders shall be binding upon the parties hereto. Such purchase orders shall be considered as "Notices to Proceed" with work or delivery or provision of quantities under this Agreement. The Contractor shall not commence work or deliver or provide quantities under this Agreement unless and until it receives a written Notice to Proceed in the form of a purchase order.

SECTION 4 ADDITIONAL SERVICES OF THE CONSULTANT

4.01 AUTHORIZED ADDITIONAL SERVICES

If authorized in writing by the CITY, the CONSULTANT shall furnish or obtain from others additional services of the following types which shall be paid for by the CITY, provided that such services are clearly consistent with the original Request for Proposals and that such services are provided for by written amendment to this Agreement.

4.01.01. Prepare documents for alternate bids requested by the CITY.

4.01.02. Provide additional or extended services during construction made necessary by: (1) work damaged during construction; (2) defective or neglected work of the construction contractor; and, (3) acceleration of the work schedule involving services beyond normal working hours.

4.01.03. Prepare to serve and serve as an expert witness for the CITY in any trial, hearing, or other judicial or quasi-judicial or administrative proceeding at customary, reasonable, and usual rates to be established prior to serving as an expert witness.

4.01.04. Subsequent to completion of final design, revise previously approved Drawings and/or Specifications or any portions thereof that the CITY desires changed to accommodate changed conditions.

4.01.05. Provide additional services in connection with the Project, including services normally furnished by the CITY and services not otherwise provided for in this Agreement.

SECTION 5 GENERAL CONDITIONS

5.01 TERMINATION AND SUSPENSION

5.01.01. This Agreement shall continue and remain in full force and effect as to all of its terms, conditions, and provisions as set forth herein until and unless the CITY shall give written notice to the CONSULTANT of its desire to terminate this Agreement, with or without cause, on a specified time and date thereafter. Such written notice to terminate this Agreement shall be given no less than thirty (30) days prior to the date this Agreement shall be so terminated, with twenty-four hours' notice in the event that funds become unavailable to the CITY for any reason whatsoever. In the event of any such termination, the CONSULTANT shall be paid by the CITY for all services actually, timely, and faithfully rendered up to receipt of the notice of termination, and thereafter until the date of termination, the CONSULTANT shall be paid only for such services as are specifically authorized in writing by the CITY.

5.01.02. This Agreement or any portion hereof may be suspended from time to time for various periods of time in the event that any project proposed hereunder is delayed, postponed, or otherwise adversely affected permanently or temporarily by action of the City of Jacksonville. In the event of any such suspension, the CONSULTANT shall be paid for all

services actually, timely, and faithfully rendered up to the date of suspension and for all services so rendered after cessation of the suspension and resumption of the services.

5.01.03. If the CITY fails to issue a written Notice to Proceed in the form of a purchase order to the CONSULTANT within six (6) calendar months from the date first above written or if the CITY suspends work under this Agreement for a period of at least six (6) calendar months once work has commenced, the CONSULTANT shall have the right at its option to terminate this Agreement by giving written notice thereof to the CITY. The giving of such written notice to terminate by the CONSULTANT shall eliminate all further rights and obligations of the parties hereunder other than the CONSULTANT's obligations under subsections 5.4, 5.5, 5.7, 5.8, 5.9 and 5.12.

5.02 OWNERSHIP OF DOCUMENTS

The CONSULTANT shall deliver to the CITY for approval and acceptance, and before being eligible for final payment of any amounts due: all drawings, maps, and plats printed on 20 lb. vellum or mylar; the originals of specifications; the approved as-built drawings if the CONSULTANT has performed contract administration; true copies of all computations, survey notes, and diaries; and, copies of memoranda and pertinent correspondence pertaining to the work (including a copy of all computer disks containing any of the aforementioned data). The CONSULTANT shall provide a copy of all CADD work on computer disks in the Autocad drawing format or the transfer DFX format. CADD work shall conform with the current CADD standards of the Engineering Division. All such documents shall become the property of the CITY. The CONSULTANT shall not be liable for any re-use of such documents for other than the specific purpose intended without the CONSULTANT's written verification or adaptation thereof.

5.03 ESTIMATES

Since the CONSULTANT has no control over the cost of labor, materials, or equipment, or over contractor's methods of determining prices, or over competitive bidding or market conditions, the estimates of construction costs provided for herein are to be made on the basis of the CONSULTANT's experience and represent its best judgment as a design professional familiar with the construction industry. The CONSULTANT does not guarantee that bids will not vary from its cost estimates and has no liability other than as set forth in Section 1.06.12 of this Agreement in the event that bids do so vary.

5.04 INDEMNIFICATION

5.04.01. Indemnities: CONSULTANT, including its employees, representatives, agents, subsidiaries, and subcontractors of any tier shall hold harmless, indemnify, and defend the CITY, including without limitation its officers, directors, members, representatives, affiliates, agents, employees, successors, and assigns (collectively the "Indemnified Parties"), against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, costs, and expenses of whatsoever kind or nature (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert witness fees, and attorney's fees) which may be incurred by, charged to, or recovered from any of the foregoing Indemnified Parties, (a) arising directly or indirectly out of any of CONSULTANT's operations, work, or services performed in connection with this Agreement, including but not limited to any and all claims for damages as a result of the injury to or death of any person or persons, or damage to or destruction of any property which arises as a result of any negligent act, error, omission, recklessness, or intentionally wrongful conduct on the part of CONSULTANT, its agents, affiliates, or assigns regardless of where the damage, injury, or death occurred, or (b)

arising out of the failure of CONSULTANT to keep, observe, or perform any of its obligations under this Agreement or in any other document or instrument delivered by CONSULTANT pursuant to this Agreement. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section relating to indemnification shall survive the Term and any holdover and/or contract extensions thereto, whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

5.04.02. Intellectual Property Indemnity: CONSULTANT shall hold harmless, indemnify, and defend the Indemnified Parties against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert witness fees, and attorney's fees), arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services constitutes an infringement of any copyright, patent, trade secret, or any other intellectual property right, and whether such injury or damage is caused by negligence, errors, omissions, recklessness, or intentionally wrongful conduct will pay all costs (including but not limited to attorney's fees and court costs), damages, charges, and expenses charged to, incurred by, or recovered from the Indemnified Parties by reason thereof. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section relating to indemnification shall survive the Term of this Agreement and any holdover and/or contract extensions thereto, whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement. If in any suit or proceeding, the Services or any product generated by the Services is held to constitute an

infringement and its use is permanently enjoined, Consultant shall immediately make every reasonable effort to secure for the CITY a license authorizing the continued use of the Service or product. If CONSULTANT fails to secure such a license for the CITY, then CONSULTANT shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the CITY at no additional cost to CITY so that the Service or product is non-infringing.

5.04.03. Violation of Laws: CONSULTANT shall hold harmless, indemnify, and defend the Indemnified Parties against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert witness fees, and attorney's fees) charged to, recovered from, or incurred by any of the Indemnified Parties arising from or based upon the violation of any federal, state, or municipal laws, statutes, resolutions, or regulations by CONSULTANT or those under its control. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section relating to indemnification shall survive the Term and any holdover and/or contract extensions thereto, whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

5.04.04. Breach of Representations, Warranties and Obligations: CONSULTANT shall hold harmless, indemnify, and defend the Indemnified Parties against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert witness fees, and attorney's fees) which may be incurred by, charged to, recovered from, or incurred by any of the Indemnified Parties arising directly or indirectly out of

(a) any breach of any representation or warranty made by CONSULTANT in connection with this Agreement or in any certificate, document, writing, or other instrument delivered by CONSULTANT pursuant to this Agreement or (b) any breach of any covenant or obligation of CONSULTANT set forth in this Agreement or any other certificate, document, writing, or other instrument delivered by CONSULTANT pursuant to this Agreement. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section relating to indemnification shall survive the Term and any holdover and/or contract extensions thereto, whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

5.05 INSURANCE

5.05.01. Without limiting its liability under this Agreement, the CONSULTANT shall procure and maintain during the life of this Agreement insurance of the types and in the minimum amounts stated below:

<u>Schedule</u>	<u>Limits</u>
Workers' Compensation	Florida Statutory Coverage
Employer's Liability (including appropriate federal acts)	\$100,000 Each Accident \$500,000 Disease Policy Limit \$100,000 Each Employee/Disease

The CONSULTANT's insurance shall cover the CONSULTANT (and to the extent its subcontractors and sub-subcontractors are not otherwise insured, its subcontractors and sub-subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI) without any restrictive endorsements other than the

Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, and any restrictive NCCI endorsements which under an NCCI filing must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, coverage is to be included for the Federal Employers' Liability Act and any other applicable federal or state law where appropriate.

Commercial General Liability: ISO Form CG0001 as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsement).

Commercial General Liability	\$1,000,000 Per Occurrence
Premises-Operations	\$2,000,000 Aggregate
Products-Completed Operation	
Contractual Liability	
Independent Contractors	
Automobile Liability	\$1,000,000 Combined Single Limit
All autos-owned, hired or used	

The City of Jacksonville shall be endorsed as an additional insured under all of the above Commercial General Liability and Automobile Liability coverage. Such insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City.

Professional Liability (and Employee Benefits Plan Liability)	\$1,000,000 per Claim & Aggregate
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Professional Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a three year reporting option beyond the annual expiration date of the policy. The coverage shall include additional coverage for Network and Information Security Offenses and Electronic Data (products) E&O.

Valuable Papers	\$100,000 per Occurrence
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The City of Jacksonville shall be named as an additional insured under Valuable Papers coverage.

5.05.02. Depending upon the nature of any aspect of the Project and its accompanying exposures and liabilities, the CITY may, at its sole option, require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.

5.05.03. Said insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better. Prior to commencing any work on the Project, Certificates of Insurance approved by the City's Division of Risk Management demonstrating the maintenance of said insurance shall be furnished to the City. The Company shall provide an endorsement issued by the insurer to provide the City thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal.

5.05.04. Anything to the contrary notwithstanding, the liabilities of the CONSULTANT under this Agreement shall survive and not be terminated, reduced, or otherwise limited by any expiration or termination of insurance coverages. Neither approval of nor failure to disapprove insurance furnished by the CONSULTANT shall relieve the CONSULTANT or its subconsultants from the responsibility to provide insurance as required under this Agreement.

5.06 SUCCESSORS AND ASSIGNS

The CITY and the CONSULTANT each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement, and any assignment or transfer by the CONSULTANT of its interests in this Agreement without the written consent of the CITY shall be void. Nothing herein shall be

construed as creating any personal liability on the part of any officer or agent of the CITY, nor shall it be construed as giving any right or benefit hereunder to anyone other than the CITY or CONSULTANT.

5.07 NON-DISCRIMINATION PROVISIONS

5.07.01. The CONSULTANT warrants that it has adopted and shall maintain a policy of non-discrimination against an employee or applicant for employment on account of race, religion, sex, color, national origin, age, or handicap which applies to all areas of employee relations throughout the term of this Agreement.

5.07.02. On written request, the CONSULTANT shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission of the CITY for the purpose of investigation to ascertain compliance with the non-discrimination provisions of this Agreement. The CONSULTANT shall not be required to produce for inspection any records covering periods of time more than one (1) year prior to the date of this Agreement.

5.07.03. The CONSULTANT agrees that if any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of the above two paragraphs shall be incorporated into and become a part of the subcontract.

5.08. PROMPT PAYMENT TO SUBCONSULTANTS, ETC.

5.08.01 Generally. When the CONSULTANT receives payment from the CITY for labor, services, or materials furnished by subconsultants, subcontractors, and suppliers hired by the CONSULTANT, the CONSULTANT shall remit payment due (less proper retainage) to those subconsultants, subcontractors, and suppliers within fifteen (15) calendar days after the CONSULTANT's receipt of payment from the CITY. Nothing herein shall prohibit the

CONSULTANT from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subconsultants, subcontractors, and suppliers. In the event of such a dispute, the CONSULTANT may withhold the disputed portion of any such payment only after the CONSULTANT has provided notice to the CITY and to the subconsultant, subcontractor, or supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to the CITY, the subconsultant, subcontractor, or supplier within ten (10) calendar days after the CONSULTANT's receipt of payment from the CITY. The CONSULTANT shall pay all undisputed amounts due within the time limits imposed by this section.

5.08.02. Jacksonville Small Emerging Business ("JSEB") and Minority Business Enterprise ("MBE") Participation. Notwithstanding Chapter 126, Part 6, *Ordinance Code*, the CONSULTANT shall pay all contracts awarded with certified JSEB's and certified MBE's, as defined therein, their pro-rata share of their earned portion of any progress payments made by the CITY under this Agreement within seven (7) business days after the CONSULTANT's receipt of payment from the CITY (less proper retainage). The pro-rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB or certified MBE at the time of payment. As a condition precedent to progress and final payments to the CONSULTANT, the CONSULTANT shall provide to the CITY with its requisition for payment, documentation that sufficiently demonstrates that the CONSULTANT has made proper payments to its certified JSEB's or certified MBE's from all prior payments that CONSULTANT has received from the CITY. The CONSULTANT shall not unreasonably withhold payments to certified JSEB's or certified MBE's if such payments have been made to the CONSULTANT. If the CONSULTANT withholds payment to its certified JSEB's or certified MBE's, which

payment has been made by the CITY to the CONSULTANT, the CONSULTANT shall return said payment to the CITY. The CONSULTANT shall provide notice to the CITY and to the certified JSEB or certified MBE whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to the CITY and to the certified JSEB or certified MBE within five (5) calendar days after CONSULTANT's receipt of payment from the CITY. The CONSULTANT shall pay all undisputed amounts due within the time limits imposed by this section. The failure to pay undisputed amounts to the certified JSEB or certified MBE within seven (7) business days after the CONSULTANT receives payment from the CITY shall be a breach of contract, compensable by 1% of the outstanding invoice's being withheld by the CITY, not as a penalty but as liquidated damages for additional and extra contract administration by the CITY. Continued failure to adhere to this section may be cause for termination of the Agreement.

5.08.03. The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between the CITY and any subconsultant, subcontractor, JSEB, MBE, or any third-party, or create any CITY liability for the CONSULTANT's failure to make timely payments hereunder. However, CONSULTANT's failure to comply with these Prompt Payment requirements shall constitute a material breach of the CONSULTANT's contractual obligations to the CITY. As a result of said breach, the CITY, without waiving any other available remedy it may have against the CONSULTANT, may (i) issue joint checks and (ii) charge the CONSULTANT a 0.2% daily late payment interest charge or the other charges specified in Chapter 126, *Ordinance Code*, for JSEB's and MBE's, and Chapter 218, Florida Statutes, for non-JSEB's or non-MBE's, whichever is greater.

5.09 RETENTION OF RECORDS

The CONSULTANT and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred in the work and shall make such materials available at all reasonable times during the period of this Agreement and for three (3) years from the date of final payment under this Agreement for inspection, copying, and/or audit by the CITY.

5.10 COMPLIANCE WITH STATE AND OTHER LAWS

5.10.01. In the provision of the Services, the CONSULTANT must comply with any and all applicable federal, state, and local laws, rules, regulations, and ordinances as the same exist and may be amended from time to time. Such laws, rules, regulations, and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes, (the Florida Sunshine Law).

5.10.02. Such laws, rules, regulations, and ordinances must also include, but are not limited to, obtaining and maintaining all licenses and certifications that are required to perform the Services contemplated in this Agreement in the City of Jacksonville, State of Florida. If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this section shall be incorporated into and become a part of the subcontract.

5.11 SETTLEMENT OF CLAIMS

In any case where the CONSULTANT deems that extra compensation is due it for services or materials not clearly covered in this Agreement or not ordered in writing by the CITY as an additional service, the CONSULTANT shall notify the CITY in writing before it begins the work on which it bases the claim. The CONSULTANT shall not commence such work without prior written authorization from the CITY. If such authorization is not previously given or the

claim is not separately and strictly accounted for, the CONSULTANT hereby agrees to waive the claim for such extra compensation. However, such notice or accounting shall not in any way be construed as proving the validity of the claim. Any dispute not otherwise settled shall be resolved by Executive Order 98-01.

5.12 ACCURACY OF WORK

5.12.01. The CONSULTANT shall be responsible for the accuracy of its work, including work by any subcontractors, and shall promptly make necessary revisions or corrections resulting from errors and omissions on the part of the CONSULTANT or subcontractors without additional compensation. Acceptance of the work by the CITY shall not relieve the CONSULTANT of the responsibility for subsequent corrections of any such errors and the clarification of any ambiguities.

5.12.02. At any time during the construction of the Project provided for by the Contract Documents or during any phase of work performed by others based on data furnished by the CONSULTANT under this Agreement, the CONSULTANT shall confer with the CITY for the purpose of interpreting the information furnished and/or correcting any errors and/or omissions made by the CONSULTANT. The CONSULTANT shall prepare all drawings or data to correct its errors and/or omissions without added compensation even though final payment may have already been received therefor.

5.12.03. The CONSULTANT shall be and shall remain liable, in accordance with applicable law, for all damages to the CITY caused by the CONSULTANT's breach of contract or its negligent performance of any of the Services furnished under this Agreement. The CONSULTANT shall not be responsible for any time delays in the Project caused by circumstances beyond the CONSULTANT's control.

5.13 PUBLIC UTILITIES AND PERMITTING AUTHORITIES

Where privately, publicly, or cooperatively owned utility companies will require re-arrangements in connection with the proposed construction and when certain permits will be required for construction, the CONSULTANT shall make the necessary contacts and confer with the owners of such utilities regarding the requisite revisions in their facilities, apprising the CITY of the results of all such contacts. The CONSULTANT shall make no commitments with utilities or permitting authorities which are binding upon the CITY. The CITY shall conduct all negotiations with public utilities and authorities. However, the CONSULTANT shall participate in such negotiations at the request of the CITY.

5.14 PROHIBITION AGAINST CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the CITY shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

5.15 TRUTH IN NEGOTIATION CERTIFICATE

The CONSULTANT understands and agrees that execution of this Agreement by the CONSULTANT shall be deemed to be simultaneous execution of a truth-in-negotiation certificate under this provision to the same extent as if such certificate had been executed apart

from this Agreement, such certificate being required by Section 287.055, Florida Statutes. Pursuant to such certificate, the CONSULTANT hereby states that the wage rates and other factual unit costs supporting the compensation hereunder are accurate, complete, and current at the time of contracting. Further, the CONSULTANT agrees that the compensation hereunder shall be adjusted to exclude any significant sums where the CITY determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of this Agreement.

5.16 INDEPENDENT CONTRACTOR

In the performance of this Agreement, the CONSULTANT shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or associate of the CITY. The CONSULTANT shall be solely responsible for the means, methods, techniques, sequences, and procedures utilized in the full performance of this Agreement.

5.17 CONSULTANT DEFINED

As used herein, the term "CONSULTANT" shall include, but not be limited to, Environmental Resource Solutions, Inc., its officers, employees, agents, subcontractors, and other persons, firms, partnerships, corporations, or other entities working for or on behalf of the CONSULTANT.

5.18 CONSTRUCTION

Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Agreement.

5.19 ORDER OF PRECEDENCE

In the event of any conflict between the provisions of this Agreement and those of the exhibits attached hereto or amendments, the priority shall be: 1) fully executed amendments, 2) the provisions of this Agreement, and 3) exhibits in decreasing order of precedence.

5.20 AMENDMENTS

This Agreement may be amended only by written instrument specifically referring to this Agreement and executed with the same formalities as this Agreement.

5.21. ETHICS PROVISION FOR PROFESSIONAL SERVICES

The CONSULTANT by affixing its signature to this Agreement represents that it has reviewed the provisions of the Jacksonville Ethics Code contained in Chapter 602, *Ordinance Code*, and the provisions of the Jacksonville Purchasing Code contained in Chapter 126, *Ordinance Code*.

5.22 COOPERATION WITH COUNSEL FOR THE CITY

The CONSULTANT acknowledges that the CITY is represented by the Office of General Counsel. During the term of this Agreement, it may be necessary to attend meetings or participate in telephone calls or discussions with counsel for the CITY for issues related to the Project. The CONSULTANT may also have its counsel at such meetings and it is agreed by the parties that neither side will claim that a conflict exists or that counsel may not represent its client on the basis of any such meeting, duty, or conference.

5.23 SEVERABILITY

Should any provision of this Agreement be deemed to be unenforceable or not legal by a court of competent jurisdiction, the remaining provisions of the Agreement shall remain in full force and effect.

5.24 ENTIRE AGREEMENT

This Agreement represents the entire agreement by and between the parties with respect to the Project. No representation, understanding, statement, agreement, course of conduct, or course of action by the parties or by their representatives that is not in this Agreement shall be binding. This Agreement may be amended only by a written instrument signed by the authorized representatives of the parties.

5.25 COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of such counterparts together shall constitute one and the same instrument.

5.26 GOVERNING LAW AND VENUE

This Agreement shall be governed and interpreted exclusively under the laws of the State of Florida. Venue for litigation under this Agreement shall be in courts of competent jurisdiction located in Jacksonville, Duval County, Florida.

5.27 NON WAIVER

Failure by either party to insist upon strict performance of any of the provisions hereof, either party's failure or delay in exercising any rights or remedies provided herein, the CITY's payment for the Services or any part or combination thereof, or any purported oral modification or rescission of this Agreement by an employee or agent of either party shall not release either party from its obligations under this Agreement, shall not be deemed a waiver of any rights of either party to insist upon strict performance hereof or of either party's rights or remedies under this Agreement or by law, and shall not operate as a waiver of any of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the

day and year first above written.

ATTEST:

CITY OF JACKSONVILLE

By James R. McCain, Jr.
James R. McCain, Jr.
Corporation Secretary

By Alvin Brown
Alvin Brown, Mayor



WITNESS:

ENVIRONMENTAL RESOURCE SOLUTIONS, INC.

By Phelitia Cruz
Signature
Phelitia C Cruz
Type/Print Name
CFO
Title

By Kim M. Allerton
Signature
Kim M Allerton
Type / Print Name
President
Title

G:\Govt Operations\JMcCain\PW\Contracts\EnvirResourceSolution.P.O.wetlands.mitigation.110413.doc

Karen Bowling
Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2013-04

Encumbrance and funding information for internal City use:

Account Various subsequently issued purchase orders

Amount \$250,000.00

This above stated amount is the maximum fixed monetary amount of the foregoing contract. It shall not be encumbered by the foregoing contract. It shall be encumbered by one (1) or more subsequently issued Purchase Order(s) that must reference the foregoing Contract. All financial examinations and funds control checking will be made at the time such Purchase Order(s) is/are issued.

In accordance with Section 24.103(e) of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under the Contract. Actual encumbrance(s) shall be made by subsequent purchase order(s) as specified in said Contract.



Director of Finance
City Contract # 9274-01


Approved as to form:

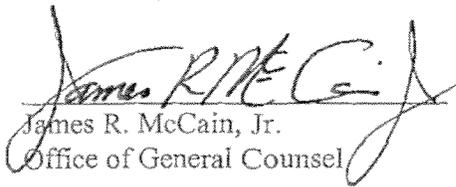

James R. McCain, Jr.
Office of General Counsel

EXHIBIT "B" (1 of 1)

NAME OF CONSULTANT Environmental Resource Solutions, Inc.

Proposal Number P-14-11 Wetland Identification, Mitigation and Related Activities

SCHEDULE OF PROPOSED RATES

1. Average hourly direct labor rates (without Fringe Benefits)

Principal (Partner or Senior Officer)	\$ <u>50.00</u> hr.
Project Manager (Responsible Professional)	\$ <u>50.00</u> hr.
Environmental Scientist I	\$ <u>38.25</u> hr.
Environmental Scientist II / Construction Supervisor	\$ <u>32.12</u> hr.
Environmental Scientist III / Mitigation Monitor	\$ <u>30.07</u> hr.
Environmental Scientist IV / Field Inspector	\$ <u>25.00</u> hr.
Environmental Scientist V	\$ <u>24.33</u> hr.
Mitigation Laborer	\$ <u>14.40</u> hr.
GIS Specialist	\$ <u>24.33</u> hr.
Drafter or CADD Operator	\$ <u>15.75</u> hr.
Clerical (Typist, Word Processor, Document Assembly, etc.)	\$ <u>16.82</u> hr.

2. Total Overhead Rate (to be applied to Direct Labor:) 150.00 %

3. Profit Rate (to be applied to Direct Labor plus Overhead) 10.00 %

4. Wetland Plant Material – Installed

3 Gallon Tree Species	\$ <u>11.25</u> ea.	1 Gallon Tree Species	\$ <u>5.50</u> ea.
1 Gallon Shrub Species	\$ <u>5.00</u> ea.	Bare Root Herbaceous Species	\$ <u>1.25</u> ea.
Herbaceous 4" Species	\$ <u>1.65</u> ea.	GPS Trimble Rental (per day)	\$ <u>75.00</u>

5. Cost of 4-man survey crew per 8 hour day (if applicable) \$ N/A day

6. Other Direct Project Costs per Unit (please specify):

Copies 8X11 B&W	- \$ <u>0.15</u>	Color	- \$ <u>0.89</u>
11x17 B&W	- \$ <u>0.30</u>	Color	- \$ <u>1.60</u>

Plots \$ 20.00 ea.

Travel \$ 0.55/mi.

Deliveries \$ 13.00 ea.

7. Estimated percentage of total fee to be performed by Subconsultants 10 %