

**RESOLUTION NO. 18-159**

**A RESOLUTION AUTHORIZING THE EXECUTION OF A  
PROFESSIONAL SERVICES AGREEMENT WITH  
SAWGRASS CONSULTING, LLC  
FOR CIVIL ENGINEERING, LAND SURVEYING, AND  
CONSTRUCTION MANAGEMENT SERVICES**

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**FINDINGS:**

1. The professional services agreement with Sawgrass Consulting, LLC, adopted by Orange Beach City Council through Resolution No. 17-144 dated August 15, 2017, has since expired.
2. The City of Orange Beach and Sawgrass Consulting, LLC, have reached an agreement (attached Exhibit A) whereby Sawgrass Consulting, LLC, will provide civil engineering, land surveying, and construction management services for the City of Orange Beach.
3. After having reviewed the agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.
4. The term of this agreement shall be for twelve (12) months from the date of adoption by the Orange Beach City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Mayor is hereby authorized to execute the agreement in substantially the form and of substantially the content now before the Council between the City of Orange Beach and Sawgrass Consulting, LLC, as an act for and on behalf of the City of Orange Beach subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 16<sup>th</sup> DAY OF OCTOBER, 2018.

  
\_\_\_\_\_  
Renee Eberly  
City Clerk

**CERTIFICATE**

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 18-159, which was duly and legally adopted at a regular meeting of the City Council on October 16, 2018.

  
\_\_\_\_\_  
City Clerk



## **PERFORMANCE CONTRACT**

THIS PERFORMANCE CONTRACT (sometimes hereinafter "Agreement") is made and entered into by and between the City of Orange Beach, an Alabama Municipal Corporation (sometimes hereinafter "City"), and Sawgrass Consulting, LLC (sometimes hereinafter "Contractor"), as follows:

WHEREAS, Contractor is engaged in the business of providing Civil Engineering, Land Surveying and Construction Management services;

WHEREAS, City desires to engage Contractor to provide said services upon the following terms and conditions;

**NOW, THEREFORE,**

### **WITNESSETH:**

City and Contractor, for and in consideration of the mutual covenants and agreements hereinafter set forth to be kept and performed by the other, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, do hereby covenant and agree as follows:

#### **I. SERVICES TO BE PERFORMED**

Contract agrees to perform Civil Engineering, Land Surveying and Construction Management services, and to represent the City as requested as their Civil Engineering, Land Surveying and Construction Management Consultant on a variety of assigned projects. Each project will be assigned to Contractor in the form of a written Task Order describing the scope of work. A copy of this Agreement shall be attached to each Task Order.

Contractor agrees to perform consulting services to the City as requested, and other services as requested that may include, but not be limited to:

Land Surveying – Boundary, Topographic, As-Built, Hydrographic, ALTA/ACSM Land Title, Route and/or Construction Layout/Staking

Civil Engineering – Civil Site Plans, Grading/Drainage Plans, Utility Design/Plans, Roadway Design/Plans, CE&I and Cost Estimating

Construction Management

Project Management

## **II. COMPENSATION**

Fees for work completed and reimbursable expenses will be invoiced to the City on a monthly basis, based on the following hourly rate schedule:



## **HOURLY RATE SHEET**

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PROJECT MANAGER	\$160.00 hour
PROFESSIONAL LAND SURVEYOR	\$160.00 hour
PROFESSIONAL ENGINEER	\$160.00 hour
ENGINEER I	\$ 95.00 hour
SURVEY MANAGER	\$120.00 hour
ONE (1) MAN SURVEY CREW	\$110.00 hour
TWO (2) MAN SURVEY CREW	\$130.00 hour
THREE (3) MAN SURVEY CREW	\$160.00 hour
CADD DESIGNER	\$ 95.00 hour
CADD TECHNICIAN	\$ 90.00 hour
CONSTRUCTION REPRESENTATIVE	\$ 90.00 hour
CLERICAL	\$ 60.00 hour

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### **III. TERM OF AGREEMENT**

Unless terminated earlier in accordance with the termination provisions of this Agreement, the term of this Agreement shall commence upon its adoption by the Orange Beach City Council and shall continue thereafter for twelve months.

### **IV. GENERAL PROVISIONS**

- A. Contractor agrees to permit at all reasonable times and places an audit of its books and records by City's duly authorized representatives.
- B. Notwithstanding any of the provisions of this Agreement, it is agreed that City has no financial interest in the business of Contractor and shall not be liable for any debts or obligations incurred by Contractor, nor shall City be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of Contractor, or in the sums earned or derived by Contractor, nor shall Contractor at any time or times use the name or credit of City in purchasing or attempting to purchase any car, equipment, supplies or other thing or things whatsoever.
- C. Contractor shall act as a representative of the City, under the direct supervision of the City. Contractor shall have no authority to obligate the City in any way whatsoever. In the performance of his duties, the Contractor shall be deemed an independent contractor.
- D. Contractor acknowledges that its identity and peculiar capacity to provide the services described hereinabove constitute a material consideration for City's having entered into this Agreement. Therefore, Contractor shall not transfer or assign this Agreement or any of the rights or privileges granted herein without the prior written consent of City; which such consent shall be granted or denied solely at City's discretion.
- E. Contractor hereby agrees to comply strictly with all ordinances of the City of Orange Beach, Alabama, and the laws of the State of Alabama and of the United States while performing its obligations under the terms of this Agreement.
- F. Contractor agrees that upon the violation of any of the covenants and agreements herein contained, on account of any act or omission or commission of Contractor, City may, at its option, terminate and cancel this Agreement.
- G. Contractor agrees that it will comply with Title 6 of the Civil Rights Act of 1964 which provides that no person will be excluded from participation in, or be denied benefits of, or otherwise be subjected to discrimination on the grounds of race,

sex, color, national origin or disability, in connection with federally funded programs.

- H. City may terminate this Agreement with or without cause at any time by giving written notice to Contractor of such termination (herein called a "Notice of Termination"), specifying the effective date thereof not less than thirty (30) calendar days before the effective date of the termination. Contractor shall have the right to terminate this Agreement by giving City written notice and remaining in service for a sufficient time to allow City to seek a suitable replacement. Should Contractor be terminated pursuant to the terms of this subpart, then this Agreement shall terminate on the last day of Contractor's current month of employment and City shall not be liable for any compensation beyond that date.
- I. Contractor agrees to indemnify and hold the City, its elected officials, officers, agents, and employees whole and harmless from all costs, liabilities and claims for damages of any kind arising in any way out of the performance of this Agreement and/or the activities of Contractor, its principals, directors, agents, servants and employees in the performance of this Agreement, for which the City is alleged to be liable. In the event the City, through no fault of its own, is made a party to any lawsuit or legal proceeding arising from Contractor's activities under this Agreement, Contractor agrees to indemnify and hold the City harmless from all costs, including attorneys' fees and expenses, associated with same. This indemnification extends only to third party claims and actions filed against the City as a result of any negligent actions by the Contractor under this Agreement. This duty shall survive the termination of this contract.
- J. All notices of cancellation, requests, demands or other communications shall be in writing and duly delivered to the following address for City at:
- Ken Grimes, City Administrator  
Post Office Box 458  
Orange Beach, Alabama 36561
- Copy to: City Attorney
- And to Contractor at:
- Sawgrass Consulting, LLC  
11143 Old Highway 31  
Spanish Fort, Alabama 36527
- K. This Agreement is the final expression of the agreement between the parties, and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no

representations, warranties, or stipulations, either oral or written, not contained herein.

- L. Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by authorized representatives of the party against whom enforcement is sought.
- M. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire agreement with respect to any party.
- N. This Agreement shall be governed by the laws of the State of Alabama, and the appropriate venue for any actions arising out of this Agreement would be Baldwin County, Alabama.
- O. Contractor shall obtain, at its own expense, all necessary licenses, permits, insurance, authorization and assurances necessary in order to abide by the terms of this Agreement.

#### V. **INSURANCE.**

For the term of this Agreement, the Contractor shall acquire and maintain in full force and effect the following liability and comprehensive insurance issued by a company licensed and qualified to do business in the State of Alabama, *which such insurance shall name the City of Orange Beach as an additional insured*, and shall attach to this contract, as proof thereof, a certificate of insurance issued by an agent licensed and qualified to do business in the State of Alabama:

General Liability Insurance - public liability including premises, products, complete operations and automobile comprehensive and liability, including owned, non-owned, and hired vehicles.

Either:

- (1) Bodily injury liability:  
\$250,000 each person  
\$500,000 each occurrence  
Property damage liability –  
\$100,000 each occurrence

Or,

- (2) Bodily injury and property damage  
combined -  
\$500,000 per occurrence

If the certificate of insurance referenced in this Agreement does not evidence insurance of owned vehicles, said certificate and this sentence shall evidence the Contractor's covenant that it does not own any vehicles and that it will not purchase or obtain any vehicles during the term of this Agreement.

Said certificate shall require that said insurance coverage will not be altered or terminated unless City shall be given written notice of such alteration or termination delivered to City not less than thirty (30) days before the effective date of such alteration or termination

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the day and year first written.

CITY OF ORANGE BEACH, A Municipal Corporation

By: \_\_\_\_\_

Mayor Tony Kennon

ATTEST:

  
\_\_\_\_\_  
City Clerk



CONTRACTOR:  
Sawgrass Consulting, LLC

By: \_\_\_\_\_

Ercil E Godwin, PLS  
Its Principal

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned Notary Public <sup>Renee Eberly</sup> in and for said County in said State, hereby certify that Anthony T. Kennon, and ~~Gathy Constantino~~, whose names as Mayor and City Clerk, respectively, of the City of Orange Beach, a Municipal Corporation, are signed to the foregoing Contract, and who are known to me, acknowledged before me on this day, that, being informed of the contents of the above and foregoing, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and seal this the 17 day of October, 2018.

(SEAL)

Renee Eberly  
Notary Public  
State of Alabama At-Large  
My Commission Expires: \_\_\_\_\_

Commission expires 07/05/2020

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said county in said state, hereby certify that Ercil E. Godwin, whose name as Principal of Sawgrass Consulting, LLC, an Alabama Limited Liability Company, is signed to the foregoing Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Contract, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal this the 2 day of October, 2018.

(SEAL)



Heather McDonald

Notary Public  
State of Alabama At-Large  
My Commission Expires: 3/24/2021