

**CONSULTANT ENGINEERING SERVICES – ARCHITECTURAL AND ENGINEERING DESIGN
SERVICES – NEW CITY HALL BUILDING E
MASTER AGREEMENT
RFQ #34-0-2021/JM**

This is an agreement entered into this ____ day of August 2021, by and between the City of Palm Bay, 120 Malabar Road, SE, Palm Bay, FL 32907 a Florida municipal corporation and political subdivision of the State of Florida, hereinafter referred to as CITY and Silling Associates, Inc. 405 Capitol Street, Upper Atrium, Charleston WV 25801 (FEIN 55-0569383), hereinafter referred to as CONSULTANT. For and in consideration of the mutual agreements hereinafter contained, and for other good and valuable consideration, the CITY hereby retains the CONSULTANT and the CONSULTANT hereby covenants to provide professional services as prescribed herein.

SECTION 1 - GENERAL IDENTIFICATION OF SERVICES

The following documents are incorporated and made part of this Agreement:

1. Specifications prepared by CITY in its Request for Qualifications No. 34-0-2021/JM, Architectural and Engineering Design Services – New City Hall Building E, (Exhibit 1).
2. Qualification Submittal for CITY prepared by CONSULTANT dated March 2, 2021 (Exhibit 2).

All exhibits may also be collectively referred to as the “Documents”. In the event of any conflict between the Documents or any ambiguity or missing specification or instruction, the following priority is established:

1. Specific direction from City Manager or designee
2. This Agreement and any attachments.
3. Exhibit 1
4. Exhibit 2

All professional services provided by the CONSULTANT for the CITY shall be identified in the attached additional documents, hereby incorporated by reference:

1. Attachment A – Schedule of Hourly Rates for Positions identified
2. Attachment B, Exhibit I – Scope of Services for Architectural and Engineering Services for the Palm Bay City Hall Building E: Task Order #01-2021
3. Attachment B, Exhibit II – Consultant’s Cost Proposal and Hourly Rate Schedule for Attachment B, Exhibit I - Task Order 01-2021

The following attachments are anticipated Task Orders in future fiscal years in accordance with the scope of work as described in Exhibit 1 and may be incorporated pending successful negotiations, budget appropriation and CITY Council approval, if required:

4. Attachment C, Exhibit I - Task Order #02-2021 [Future Task Order to be negotiated i.e., Bidding Support & Construction Administration]
5. Attachment C, Exhibit II - Consultant's Cost Proposal and Hourly Rate Schedule for Attachment C Scope of Services Task Order

No additional work shall be performed under this Agreement without written authorization from the City. The written authorization for additional services shall constitute an addendum to this Agreement.

SECTION 2 - CITY OBLIGATIONS

The CITY agrees that they shall furnish to the CONSULTANT, upon request, any data available in the CITY'S files pertaining to the work to be performed under this Agreement.

SECTION 3 - PROFESSIONAL SERVICES

Upon receipt of Authorization to Proceed, CONSULTANT agrees to perform professional services associated with Exhibit "1" in accordance with the negotiated terms of this Agreement, and in accordance with accepted professional standards and practices. The CONSULTANT agrees to, without causing any delay in the project, correct any errors, oversights, or omissions and prepare any revisions at no cost to the City, that may be required because the work violates accepted professional standards and practices or if deemed to be inadequate, insufficient, or defective. This remedy shall be cumulative to all other remedies available under the Agreement.

In connection with professional services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- A. Maintain an adequate staff of qualified personnel.
- B. Comply with federal, state, county and local laws or ordinances applicable to the work.
- C. Cooperate fully with the CITY in the scheduling and coordination of all phases of the work.
- D. Supervise and coordinate the work of any subconsultants.
- E. Cooperate and coordinate with other CITY consultants, as directed by the CITY.

- F. Report the status of the work to the CITY upon request and hold pertinent data, calculations, field notes, records, sketches and other projects open to the inspection of the CITY or its authorized agent at any time.
- G. Submit for CITY review all design computations, sketches and other data representative of the work's progress at the percentage stages of completion that may be stipulated in Scope of Services Task Order Attachment(s) and submit for CITY approval the final work product upon incorporation of any modifications requested by the CITY during any previous review. Any CITY approval of the CONSULTANT'S work shall not be deemed to diminish the CONSULTANT'S responsibilities as set forth in this Agreement.
- H. Confer with the CITY during the further development and implementation of improvements for which the CONSULTANT has provided design or other services.
- I. Interpret plans and other documents, correct errors and omissions and prepare any necessary revisions not involving a change in the scope of the work required, at no additional cost to the City.
- J. Prior to final approval of the work by the CITY, conduct and complete a preliminary check of any documents through any review committee, third party consultant or any county, city, state or federal agency from which a permit or other approval is required. Any approval obtained from the CITY or any other agency shall not be deemed to diminish or discharge the CONSULTANT from the responsibilities set forth in this Agreement.
- K. Following CITY'S approval of the construction documents and of the latest preliminary estimate of construction cost, when so directed and authorized by CITY, assist CITY in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.
- L. If requested, review and analyze the bids/proposals received by CITY, and make a recommendation for any award based on CITY's Procurement Ordinance.
- M. Provide CITY with a list of recommended, prospective proposers or bidders.
- N. Attend all pre-bid/pre-proposal conferences.
- O. Recommend any addenda, through CITY Engineer, as appropriate to clarify, correct, or change Proposal Documents. If Pre-Qualification of proposers is required as set forth in the Request for Bid/Proposal, assist CITY, if requested, in developing qualification criteria, review qualifications and recommend acceptance or rejection of the proposers.

- P. If requested, evaluate bids/proposals and bidders/proposers, and make recommendations regarding any award by CITY.

The CITY shall make decisions on all issues regarding interpretation of the construction documents, and on all other matters relating to the execution and progress of the Work after receiving a recommendation from CONSULTANT, and the CITY shall have the absolute and undisputed authority to decide any differences or conflicts between the CONSULTANT and any Contractor for the City, and shall check and approve samples, schedules, shop drawings and other submissions for conformance with the concept of each Project, and for compliance with the information given by the Construction Documents. CONSULTANT shall also prepare Change Orders for the City's consideration, assemble written guarantees required of the Contractor, and review and recommend progress payments to the Contractor based on each Project Schedule of Values and the percentage of Work completed. All change orders must be in writing and signed by the CITY and the other parties/party to be bound by the change order.

The CITY shall maintain a record of all change orders which shall be categorized according to the various types, causes, etc. that the CITY may determine are useful or necessary for its purpose. Among those change orders shall be change orders identified as architectural/engineering errors or omissions. It is specifically agreed that any change to the work identified as an error on the part of CONSULTANT shall be considered to be an additional cost to CITY that would not have been incurred without the error. It is further specifically agreed that the actual documented increase in construction costs or fifteen percent (15%) of the construction costs of any item categorized as an omission, whichever is less, shall be considered an additional cost to CITY that would not be incurred without the CONSULTANT's omission. So long as the total of those two numbers (change order costs for errors and costs as defined herein for omissions) remain less than five percent (5%) of the total construction cost of the project, CITY shall not look to CONSULTANT and/or its insurer for reimbursement for errors and omissions. Should the sum of the two as defined above exceed five percent (5%) of the total construction cost, CITY shall recover the full and total additional cost to CITY.

To obtain such recovery, CITY shall deduct the cost to the CITY from CONSULTANT's fee. Should additional costs incurred by CITY exceed CONSULTANT's insurance deductible, CITY shall look to CONSULTANT and CONSULTANT's insurer for the remaining amount of additional construction costs incurred by CITY. In executing this agreement, CONSULTANT agrees to the reasonableness of these calculations and to

CITY's right to recover same as stated above and CONSULTANT ensures that its insurer has been provided a copy of this provision. The recovery of additional costs to CITY under this paragraph shall not limit or preclude recovery for other separate and/or additional damages, which CITY may otherwise incur.

SECTION 4 - TIME OF COMPLETION

The services to be rendered by the CONSULTANT for each section of the work shall commence as specified in Section 7 of this Agreement and shall be completed within the time stated in Scope of Services Task Order Attachment(s).

A reasonable extension of time shall be granted by the CONSULTANT in the event there is a delay on the part of the CITY in fulfilling its part of the Agreement or should weather conditions, acts of God, any force majeure, or hidden conditions delay performance of the CONSULTANT's or the CITY's duties. Extensions of time shall be the sole remedy of the CONSULTANT for such delays, and the CONSULTANT will not be entitled to any damages or any claim for extra compensation for direct costs associated with such delay; CONSULTANT agrees that it will not be entitled to any damages or any claim for extra compensation for consequential damages of any type whatsoever for any such extensions including but not limited to damages and compensation for any direct or indirect financial damages, losses for extended corporate overhead impacted, extended project overhead impacts, project support, services, or by any other name or other legal concept, label or theory or any business damages or losses of whatever type or nature and CONSULTANT hereby knowingly waives any right to make any such claim or claims and acknowledges additional good and valuable consideration for such waiver and lack of entitlement to such damages, losses and compensation.

SECTION 4.1 - DELAY IN PERFORMANCE/FORCE MAJEURE

CITY shall be entitled to withhold progress payments from CONSULTANT for services rendered until completion of CONSULTANT's services to CITY's satisfaction.

Any delay due to a force majeure, shall not subject CITY to any liability to CONSULTANT. At CITY's option, the period specified for performance of services may be extended by the period of delay occasioned by any such circumstance and services not performed by CONSULTANT shall be made or performed during such extension, or the time to perform the services not performed shall be extended for a period equal to such delay. During this period such delay shall not constitute a delay by CONSULTANT.

SECTION 5 - COMPENSATION

The CITY agrees to pay CONSULTANT for services rendered pursuant to this Agreement, all fees and other compensation computed in accordance with one or a combination of the methods outlined below, as specified in an approved Attachment A, Hourly Rate Schedule, Attachment(s) for Scope of Services Task Orders, and in accordance with a City issued Purchase Order:

- A. Hourly Rate – the CONSULTANT shall be compensated at the attached Hourly Rate Schedule (Attachment A) for each hour of time engaged directly in the work.
- B. Lump Sum Fee – At the option of the CITY, the fee for any requested portions of work may be lump sum if mutually agreed upon by the CITY and the CONSULTANT, stated in a written Scope of Services Task Order and referenced in the issued Purchase Order.
- C. Reimbursable Expenses – The CONSULTANT shall be compensated for certain work-related expenditures not covered by fees for CONSULTANT services, provided such expenditures are previously and expressly authorized by the CITY in writing. All basic reimbursable costs including reproduction, deliverables, and travel should be included in any proposed Lump Sum Task Fee. Other requests for reimbursable expenses must be brought to the attention and approved by the CITY before the work is performed. If authorized by the CITY in advance in writing and upon receipt of satisfactory back-up materials, the CONSULTANT will be compensated for such reimbursable expenses. Such expenses may include:
 - a. Travel, Lodging and Meals, provided travel occurs in coach class and lodging and meals do not exceed the Domestic Per Diem rates listed in the current edition Appendix “A” of Chapter 301 of the Federal Travel Regulations.
 - b. Courier Services.
 - c. Facsimile (\$2.00 per facsimile).
 - d. Photocopies (\$.0.15 per page).
 - e. Long Distance and Conference Telephone Charges.
 - f. 3rd Party expenses, such as printing, incurred on behalf of CITY.
 - g. Other expenses approved by CITY in writing prior to the time CONSULTANT incurs such expenses.
- D. At least thirty (30) days prior to each anniversary date of this Agreement either party may request an adjustment to the rates provided for herein to apply in the forthcoming year. Failure of the parties to agree on a new rate shall constitute a

basis for issuing a Notice of Termination by the CITY. Any proposed changes in rates by the CONSULTANT shall be subject to the prior written approval of the CITY. In the event the CONSULTANT requests a change in rate, either party may terminate this Agreement in accordance with Section 15 should the proposed rates or fees not be mutually acceptable. If the CONSULTANT fails to request a rate adjustment prior to the anniversary date, the previous year's rates shall remain in effect.

- E. The CITY shall not pay the items mentioned in Section 4 herein.

SECTION 6 - PAYMENT AND PARTIAL PAYMENTS

Subject to the CITY'S right to withhold any amounts reasonably necessary to complete or correct defective or substandard work, the CITY may make monthly payments or partial payments to the CONSULTANT for all authorized work performed during the previous calendar month, and in accordance with Attachment A, B and C (and other Scope of Services Task Orders) and under the provisions of Chapter 218, Part VII, (Local Government Prompt Payment Act), Florida Statutes. City shall promptly pay consultant any undisputed amounts consistent with the Local Government Prompt Payment Act.

- A. The CONSULTANT shall submit signed invoices to the CITY.
- B. The amount of each invoice submitted shall be the amount due for all services performed to date in connection with authorized work, as certified by the CONSULTANT. Each invoice shall include any authorized reimbursable expense, accompanied by appropriate documentation.
- C. Invoices for the work other than lump sum shall include a breakdown for each part of the work billed for each item and personnel as identified in Attachment A.

SECTION 7 - SCHEDULE OF WORK

The CITY shall have the sole right to determine on which units or sections of the work the CONSULTANT shall proceed and in what order. Should a work revision effect a change in scope, cost or schedule of the work, the CONSULTANT shall submit such revision(s) for review and, if warranted, approval by the CITY in writing.

The CONSULTANT shall commence work within five working days of the Authorization to Proceed unless otherwise specified in the Authorization to Proceed.

SECTION 8 - RIGHT OF DECISIONS

All services by the CONSULTANT shall be performed in accordance with all professional standards and practices and to the reasonable requirements of the CITY. The CITY shall make all decisions on all claims, questions and disputes arising under this Agreement. In the event the CONSULTANT does not concur with any decision of the CITY, it must, within thirty (30) days after determination by the CITY, unless such time is extended in writing by CITY, present written objections to the decision to the Chief Procurement Officer (CPO) or her/his designee for resolution. Before taking any action to contest the CITY's determination in a court of competent jurisdiction, the CONSULTANT must follow the appeal process established in this Agreement and provided further that the CONSULTANT strictly abides by the time deadline set forth in this paragraph; failure to do so will result in making the CITY's decision final. During any appeal of, or objection to, the CITY's decision, CONSULTANT shall continue to perform all work in accordance with professional standards and practices and the requirements of this Agreement.

SECTION 9 - OWNERSHIP OF DOCUMENTS

All reports, tracings, plans, maps, and/or other work products developed by the CONSULTANT pursuant to this Agreement shall become the sole property of the CITY without restrictions or limitation upon the CITY's use and shall be made available by the CONSULTANT at any time upon request by the CITY. When each individual section of work requested pursuant to this Agreement is complete, all of the above work products shall be delivered to the CITY for its use.

CONSULTANT agrees that all documents maintained and generated pursuant to this Agreement shall be subject to all provisions of Chapter 119, Florida Statutes, should it apply.

It is further understood that any report, tracing, plan, map or other work product, without limitation, given by CITY to CONSULTANT pursuant to this Agreement shall at all times remain the property of CITY, shall be returned to CITY, and shall not be used by CONSULTANT for any other purpose without the written consent of the Chief Procurement Officer (CPO).

However, should CITY utilize the work product in connection with a project upon which CONSULTANT is not retained by CITY, CITY shall accept all responsibility for such utilization to the extent provided by law. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the CITY's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section; and no claim or award against the CITY shall include attorney fees, investigative costs, expert fees, suit costs or prejudgment interest.

SECTION 9.1 - COURT APPEARANCE, CONFERENCES AND HEARINGS

This Agreement shall obligate CONSULTANT to prepare for and appear in litigation on behalf of CITY involving any dispute arising out of any work performed or services provided out of this Agreement all at no cost to the City. CONSULTANT shall also confer with CITY, its attorneys and experts, during the performance of the Services regarding the interpretation of this Agreement, the correction of errors and omissions, the preparation of any necessary revisions to correct errors and omissions or the clarification of service requirements, all at no cost to the CITY. Work by CONSULTANT, as a result of litigation, beyond the scope of the original work shall be considered an additional service that shall be paid in accordance with Section 5 of this Agreement.

SECTION 10 - REUSE OF DOCUMENTS

The CONSULTANT may not retain, reuse and/or copy data or work products developed by the CONSULTANT for the CITY without express written permission of the Chief Procurement Officer (CPO). The CONSULTANT will upon request provide the CITY additional copies of reports, tracings, plans, maps, and/or other work products produced pursuant to this Agreement at the cost for reproduction and not for the cost of labor.

SECTION 11 - NOTICES

Any notices, reports or other written communications from the CONSULTANT to the CITY shall be considered delivered when posted by certified mail or delivered in person to the CITY.

The CITY'S representative will be:

Greg Minor, Facilities Maintenance Director
1150 DeGroodt Rd SW
Palm Bay, FL 32908

With Copies to:

Chief Procurement Officer	and	City Manager
120 Malabar Road, SE		120 Malabar Road, SE
Palm Bay, FL 32907		Palm Bay, FL 32907

Any notices, reports or other communications from the CITY to the CONSULTANT shall be considered delivered three (3) days after being posted by U.S. mail to the CONSULTANT at the last address left on the file with the CITY. If delivered in person to CONSULTANT or the CONSULTANT'S authorized representative, delivery will be considered immediate. The CONSULTANT'S representative will be:

Mr. Tom Potts, President
Silling Architects
650 E. Robinson Street, Suite 630
Orlando, FL 32801
321.296.8100

SECTION 12 - AUDIT RIGHTS

The CITY reserves the right to audit the records of the CONSULTANT related to this Agreement at any reasonable time during the prosecution of the work included herein and for a period of five (5) years after final payment is made. The CONSULTANT agrees to provide copies of any records necessary to substantiate payment requests to the CITY as may be requested by the CITY, solely at the cost of reproduction.

SECTION 13 – PUBLIC RECORDS

The City is a public agency subject to Chapter 119, Florida Statutes. The CONSULTANT shall comply with Florida's Public Records law. Specifically, the CONSULTANT shall:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform this service.
- b. Provide the public agency with access to public records at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- d. Meet all requirements for retaining public records and transfers to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The failure of the CONSULTANT to comply with the provisions set forth in this section shall constitute a material breach of Agreement and shall be cause for immediate termination of the Agreement.

If the CONSULTANT has questions regarding the application of Chapter 119 Florida Statutes, to the CONSULTANT's duty to provide public records relating to

this contract, contact the custodian of public records at the City of Palm Bay Procurement Department, 120 Malabar Road SE, Bldg. B, Suite 200, Palm Bay, Florida 32907; 321-952-3424; or procurement@pbfl.org.

SECTION 14 - SUBCONSULTING

The CONSULTANT shall not assign or transfer any work under this Agreement without the express written approval of the CITY. The CONSULTANT shall cause the name(s) of any subconsulting firms responsible for major portions (or separate specialty) of the work to be inserted in the pertinent documents or data. Subconsultant rates shall not be marked up by the CONSULTANT.

The CONSULTANT shall be fully responsible to CITY for all acts and omissions of any officers, representatives, agents, employees, or subconsultants of CONSULTANT. Subconsultants of CONSULTANT shall have appropriate general liability, professional liability and workers' compensation insurance, or be covered by CONSULTANT's insurance. CONSULTANT shall furnish CITY with appropriate proof of insurance and releases from all subconsultants in connection with the work performed.

SECTION 15 - CONTINGENT FEES

The CONSULTANT warrants that he or she 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 he or she has not paid or agreed to pay any person, company or corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift or other consideration contingent upon or results from the award or making of this Agreement. For any breach or violation of this provision, the CITY shall have the right to terminate this Agreement, without liability, and, at its discretion, to deduct from the contract price or amounts due to CONSULTANT or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any damages related to the breach of the provision and shall report the details of such breach or violation to the proper legal authorities where and when appropriate.

SECTION 16 - DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for the duration of the PROJECT as defined in Exhibit 1 and Attachment(s) for Scope of Services Task Orders, unless it is terminated as provided herein.

SECTION 17 – TERMINATION FOR CONVENIENCE

The CITY reserves the right to terminate this contract without cause by giving thirty (30) days prior notice to the CONSULTANT in writing of the intention to terminate. Payment only for worked performed will be made in accordance with Section 6, Payment and Partial Payment. The City shall not be liable to Consultant for any consequential or incidental damages.

SECTION 18 – NON-APPROPRIATIONS

In the event sufficient budgeted funds are not available for a new fiscal period, the CITY shall notify the CONSULTANT of such occurrence and Agreement shall terminate on the last day of current fiscal period without penalty or expense to the City.

SECTION 19 – NOTICE OF DEFICIENCY

If the CONSULTANT is notified in writing of a fault, deficiency or error in the Work or criminal records of employees provided within ten (10) days from the discovery of any fault, deficiency or error of the Work, the CONSULTANT shall, at the CITY's option, either: 1) re-perform such portions of the Work to correct such fault, defect or error, at no additional cost to the CITY, or 2) refund to the CITY, any amounts paid by the CITY that are attributable to such portions of the faulty, defective or erroneous Work, including the costs for re-performance of the work provided by other CONSULTANTS.

SECTION 20 – TERMINATION FOR CAUSE/DEFAULT

The CITY may terminate with cause if at any time the CONSULTANT fails to fulfill or abide by any of the terms or conditions specified. Failure of the CONSULTANT to comply with any of the provisions of this Agreement shall be considered a material breach of Agreement and shall be cause for termination of the Agreement at the discretion of the City.

An event of default shall mean a breach of this Agreement by CONSULTANT as determined by CITY. An event of default shall include but not be limited to the following:

- CONSULTANT has not performed services on timely basis;
- CONSULTANT has refused or failed to supply enough properly skilled personnel;

- CONSULTANT has failed to make prompt payment to subcontractors or suppliers for any services;
- CONSULTANT has failed to fulfill representations made in this Agreement;
- CONSULTANT has refused or failed to provide the Services as defined in this Agreement; or
- CONSULTANT has failed to timely address a fault, deficiency or error in the Work or criminal records of employees as provided in the Notice of Deficiency.
- CONSULTANT understands and agrees that the CITY may immediately terminate this contract upon written notice if the CONSULTANT is found to have submitted a false certification or any of the following occur with respect to the CONSULTANT or a related entity: (i) for any contract for goods or services in any amount of monies, it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars (\$1,000,000) or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

If a CONSULTANT is in default on its contract with the CITY, the CITY shall follow the procedures contained herein:

- A. The CITY shall notify, in writing, the CONSULTANT to adhere to contract terms and conditions. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure within a reasonable time period (such reasonable time should not be less than 10 days after receipt of such notice). The notice will also provide that, should it fail to perform within the time provided, the CONSULTANT will be found in default and removed from the CITY's approved vendor list.
- B. Unless the CONSULTANT corrects its failure to perform within the time provided, or unless the CITY determines on its own investigation that the CONSULTANT's failure is legally excusable, the CITY shall find the CONSULTANT in default and shall issue a second notice stating (i) the reasons the CONSULTANT is considered in default, (ii) that the CITY will reprocore or has reprocored the commodities or services, and (iii) and the amount of the reprocorement if known.
- C. The defaulting CONSULTANT will not be eligible for award of a contract by the CITY until such time as the CITY is reimbursed by the defaulting CONSULTANT

for all reprocurement costs. Reprocurement costs may include both administrative costs and costs or price increases incurred or to be incurred as a result of the reprocurement.

- D. Pursuant to Section 38.14, Procurement Code of Ordinance, the defaulting CONSULTANT will be advised of the right to initiate written protest proceedings pursuant to Section 38.13 of the Procurement Ordinance within five (5) business days after the date of notification.
- E. Until such time as it reimburses the CITY for all reprocurement costs and the CITY is satisfied that further instances of default will not occur, the defaulting CONSULTANT shall not be eligible for award of a contract by the CITY. To satisfy the CITY that further instance will not occur; the defaulting CONSULTANT shall provide a written corrective action plan addressing the original grounds for default.

The forgoing provisions do not limit, waive or exclude the CITY's remedies against the defaulting CONSULTANT at law or in equity.

In an Event of Default, CONSULTANT shall be liable for damages to the CITY resulting from lost funding and for the difference between the cost associated with procuring services from CONSULTANT and the amount actually expended by CITY, in procurement of another professional consultant to perform the services of CONSULTANT. CITY shall be entitled to recover consequential damages and lost funding and administrative costs associated with the procurement of alternative professional services.

In the event of termination by the City:

1. The CITY'S sole obligation to the CONSULTANT shall be for payment of those portions of work which has been authorized and satisfactorily completed. Such payment shall be determined on the basis of the hours of work performed by the CONSULTANT, or the percentage or work complete as estimated by the CITY and agreed upon by the CONSULTANT up to the time of termination.
2. It is understood by CITY and CONSULTANT that any payment to CONSULTANT shall be made only if CONSULTANT is not in default under the terms of this Agreement as determined by the CITY.
3. In the event that the CONSULTANT changes its name, merges with another company, becomes a subsidiary or makes other substantial changes in its business structure or its principals, the CITY reserves the right to terminate this Agreement.
4. In the event of termination of this Agreement, the CONSULTANT agrees to

surrender any and all documents prepared by the CONSULTANT for the CITY and those documents delivered by the CITY to the CONSULTANT that pertain to this Agreement, of which, the CITY will have full ownership thereof. CONSULTANT may, provided the CITY gives its written consent, retain copies of such documents for record purposes.

SECTION 21 – INDEMNIFICATION

For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CONSULTANT, including but not limited to the CONSULTANT's officers, officials, employees, representatives, agents, contractors officers, etc., subcontractors and their officers, etc. (hereinafter CONSULTANT) hereby agrees to indemnify, and hold harmless the City of Palm Bay, including but not limited to its officers, officials, and employees and all those others acting on the City's behalf (hereinafter CITY) against liability, loss, costs, damages, expenses, claims or actions, including but not limited to reasonable attorney's fees for trials and appeals and expert's fees and costs that the City may incur arising wholly or in part due to negligent or deliberate act, error or omission of CONSULTANT in the execution, performance or non-performance or failure to adequately perform CONSULTANT'S obligation(s) pursuant to this Agreement.

Nothing contained in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28 Florida Statutes, or to extend the City's liability beyond the limits established in said Section 768.28. No claim or award against the City shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest.

SECTION 22 - INSURANCE

The CONSULTANT and its subcontractors, subconsultants, assignees and suppliers will be required to procure and maintain, at its own expense and without cost to the CITY, until final acceptance by the CITY of all products or services covered by the Agreement, the following types of insurance in the following minimum amounts:

- A. **Commercial General Liability:** The CONSULTANT shall provide minimum limits of \$1,000,000.00 each occurrence, \$1,000,000.00 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, independent contractors, products, completed operations, broad form property damage, personal and advertising injury, and contractual liability, specifically confirming and

insuring the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing to any insurance maintained by the City of Palm Bay and shall name the City of Palm Bay as an additional insured. The policy of insurance shall be written on an “occurrence” basis and form.

B. **Automobile Liability Insurance:**

CONSULTANT shall provide minimum limits of liability of \$1,000,000.00 each accident, combined single limit for bodily injury and property damage. This shall include coverage for:

- Owned Automobiles
- Hired Automobiles
- Non-Owned Automobiles

C. **Professional Liability Insurance:**

Professional liability insurance with a minimum limit of one million dollars (\$1,000,000) aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible is not to exceed \$5,000 for each claim CONSULTANT represents it is financially responsible for the deductible amount.

D. **Workers' Compensation Coverage:**

Full and complete Workers' Compensation Coverage, including coverage for Employer's Liability, as required by State of Florida law, shall be provided. **Should the Named Vendor utilize a Professional Employer Organization, said Vendor acknowledges and agrees that all employees sent to the City of Palm Bay MUST be included on that PEO roster.**

E. **Insurance Certificates:**

The City of Palm Bay is to be specifically included on all certificates of insurance (with exception to Workers Compensation and Professional Liability) **as an additional insured. Waiver of Subrogation is required** for Commercial General Liability and Automobile Liability. All certificates must be received prior to commencement of service/work. In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued thirty - (30) days prior to said expiration date. The certificate shall provide a thirty - (30) day notification clause in the event of cancellation or modification to the policy.

The CONSULTANT shall declare any self-insured retention or deductible amount in excess of \$5,000 for any policy. The City reserves the right to reject any self-insured retention or deductible in excess of \$5,000.

All insurance carriers shall be rated (A) or better by the most recently published A.M. Best Rating Guide. Unless otherwise specified, it shall be the responsibility of the CONSULTANT to insure that all subcontractors comply with the insurance requirements set forth in this Agreement. The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier.

CONSULTANT shall obtain insurance on an “occurrence” basis if such insurance is available at commercially reasonable premium costs. Any insurance on a “claim made” basis shall be maintained for at least three (3) years after acceptance of the Work.

SECTION 23 - QUALITY CONTROL

The CONSULTANT shall provide a high level of quality control and accuracy. The CITY may request additional data collection or reanalysis of data at no expense to the CITY. If the original data collected and/or data analysis is found to be accurate and reasonable, the CONSULTANT shall be compensated for the additional work in accordance with Section 5 of this Agreement.

The CONSULTANT acknowledges that the CITY may periodically evaluate the CONSULTANT’S performance and that the evaluation may be used by the CITY in determining the CONSULTANT’S qualifications for future contracts with the CITY.

In accordance with the City’s Procurement Manual, upon completion and close-out of the project, the project manager or contract administrator shall prepare a Vendor Performance Evaluation form (PROC-VP-001) rating the CONSULTANT’S level of service, and indicating whether they are recommended for future awards. A copy shall be provided to the Procurement Department for inclusion in the RFQ and vendor files. A copy shall be provided to the CONSULTANT.

SECTION 24 - NON-EXCLUSIVE AGREEMENT

The parties acknowledge that this agreement is not an exclusive agreement and the CITY may employ other consultants, professional or technical personnel to furnish services for the CITY, as the CITY, in its sole discretion, finds is in the public interest.

SECTION 24.1 - REPRESENTATIONS

- A. CONSULTANT represents that it is able to furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement and all services performed under this Agreement shall be performed in a professional manner suitable to the CITY.
- B. CONSULTANT represents, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience and manpower to perform the services described in this Agreement.
- C. CONSULTANT shall be responsible for technically-deficient designs, reports or studies, for two years after the date of final acceptance of the Services by CITY. CONSULTANT shall, upon the request of CITY, promptly correct or replace all deficient work due to its errors and/or omissions without cost to CITY. CONSULTANT shall also be responsible for all damages resulting from CONSULTANT's deficient documents. Payment in full by CITY for services performed does not constitute a waiver of this representation.
- D. All services performed by CONSULTANT shall be to the satisfaction of CITY. In cases of disagreement or ambiguity, Section 8 of this Agreement shall govern all questions, difficulties and disputes of whatever nature that may arise under this Agreement. If resolution cannot be reached, the provisions of Section 20 shall apply.
- E. CONSULTANT represents that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this contract and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for CONSULTANT any fee, commission, percentage fee, gifts or any other considerations contingent upon or resulting from the award or making of this contract. For breach or violation of this representation, CITY shall have the absolute right to cancel this Agreement without liability to CONSULTANT or any third party.

SECTION 25 - TRUTH-IN-NEGOTIATIONS

In accordance with the provisions of Section 287.055, Florida Statutes, the CONSULTANT agrees to execute a truth-in-negotiations certificate and agrees that the original contract price and

any additions may be adjusted to exclude any significant sums by which the contract price is increased due to inaccurate, incomplete unit costs.

SECTION 26 - INTEREST OF MEMBERS OF CITY AND OTHERS

No officers, members or employees of the CITY, and no members of its governing body, and no other public official of any other governmental entity, who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement that affects their personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 27 - INTEREST OF CONSULTANT

The CONSULTANT covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, that shall conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed by the CONSULTANT.

SECTION 28 - INDEPENDENT CONSULTANT

CONSULTANT and its employees, agents, contractors and subcontractors shall be deemed to be independent and not CITY agents or employees. CONSULTANT, its employees or agents, contractors, subconsultants and subcontractors shall not attain any rights or benefits under CITY's Personnel Rules and Regulations or Pension Systems nor any rights generally afforded CITY's classified or unclassified employees. CONSULTANT, its agents, employees, or subconsultants shall not be deemed entitled to the Florida Workers' Compensation benefits as a CITY employee.

SECTION 29 - NON-DISCRIMINATION

CONSULTANT agrees that it will comply with all federal and state requirements concerning fair employment and will not discriminate by reason of race, color, age, religion, sex, national origin or physical handicap.

SECTION 30 - OTHER PROVISIONS

A. Title and paragraph headings are for convenient reference and are not a part of this

Agreement.

- B. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing.
- C. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida by a court of competent jurisdiction, such provision, paragraph, sentence, word or phrase shall be deemed modified in order to conform with Florida law or any order entered by such court. If not modifiable to conform to such law or order, then it shall be deemed severable and, in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.
- D. The parties hereby waive the right to a trial by jury in any action, proceeding or counterclaim brought or filed by either of them against the other. Venue for any court action arising out of this Agreement shall be in Brevard County, Florida.
- E. There are no third-party beneficiaries intended to be bound by or to enforce this Agreement.
- F. By entering into this Agreement, the CONSULTANT 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 subconsultants to provide an affidavit attesting that the subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. The CONSULTANT shall maintain a copy of such affidavit for the duration of the Agreement. Failure to comply will lead to termination of this Agreement, or if a subconsultant knowingly violates the statute, the subconsultant 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 Agreement is terminated for a violation of the statute by the CONSULTANT, the CONSULTANT may not be awarded a public contract for a period of 1 year after the date of termination.
- G. When applicable, the Consultant's employees are required to obtain, at no charge, from the City's Human Resources Department, a security identification badge prior to performance of its awarded contract. This law is established by the City Council

through the City Ordinance Number 2007-48, Public Protection Act, as amended by City Ordinance Number 2007-96, with an effective date of November 15, 2007.

SECTION 31 - LIMITATION OF LIABILITY

The CITY desires to enter into this Agreement only if in so doing the CITY can place a limit on the CITY's liability for any cause of action arising out of this Agreement. For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CONSULTANT expresses its willingness to enter into this Agreement with the knowledge that the CONSULTANT's recovery from the CITY to any action or claim arising from the Agreement is limited to a maximum amount of the contract value less the amount of all funds actually paid by the CITY to CONSULTANT pursuant to this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the CITY's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section; and no claim or award against the CITY shall include attorney's fees and costs, investigative costs, expert fees, or pre-judgment interest. This section shall not prevent the CITY from taking court action it deems necessary against, including but not limited to, the CONSULTANT, its subcontractors, subconsultants, assignees, suppliers and employees.

SECTION 32 - ENTIRETY OF AGREEMENT

This writing, together with documents referenced herein, embody the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein.

No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties and added as an addendum to this Agreement.

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida. The venue for any litigation arising out of this Agreement shall be Brevard County, Florida.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this day of _____, 2021.

As approved by City Council On: _____

ATTEST:

**CITY OF PALM BAY
BREVARD COUNTY, FLORIDA**

Terese Jones, City Clerk

By: _____
Juliet Misconi, Chief Procurement Officer

WITNESS:

SILLING ARCHITECTS

By: _____
(Name of Individual)

By: _____
(Name of Individual)

Printed Name

Printed Name

TRUTH-IN-NEGOTIATION CERTIFICATE AND AFFIDAVIT

**STATE OF FLORIDA
COUNTY OF BREVARD**

Before me, the undersigned authority, personally appeared affiant, _____,
who being first duly sworn, deposes and says:

1. That the undersigned firm is furnishing this Truth in Negotiation Certificate pursuant to Section 287.055(5)(a) of the Florida Statutes for the undersigned firm to receive an agreement for professional services with the City of Palm Bay, Brevard County, Florida.

2. That the undersigned firm is a corporation which engages in furnishing professional architect and engineering services and is entering into an agreement with the City of Palm Bay, Brevard County, Florida to provide professional services for a project known as the Palm Bay City Hall Building Hall Building E

3. That the undersigned firm has furnished the City of Palm Bay, Brevard County, Florida a detailed analysis of the cost of the professional services required for the project.

4. That the wage rate information and other factual unit cost, which the undersigned firm furnished, were accurate, complete and current at the time the undersigned firm and the City of Palm Bay entered into the agreement for professional services on the project.

5. That the agreement which the undersigned firm and the City of Palm Bay entered into on this job contained a provision that the original agreement price and any additions thereto shall be adjusted to include any significant sums by which the City of Palm Bay determines the agreement price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit cost and that all such agreement adjustments shall be made within one year following the end of the agreement.

FURTHER AFFIANT SAYETH NAUGHT.

Consultant's Company Name

By: Thomas M. Potts
President

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, ____ (year) by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal in the State and County last aforesaid this
____ day of _____, ____ (year).

Signature

Notary Name (typed or printed)

Title or Rank

CITY OF PALM BAY, FL

ATTACHMENT A - SCHEDULE OF HOURLY RATES

**In accordance with City's Master Contract #34-0-21/JM
July 20, 2021**

Architectural – Silling Architects

Principal-in-Charge	\$195/hr
Design Principal	\$195/hr
Project Manager	\$175/hr
Architectural Designer	\$155/hr
Interior Designer	\$135/hr
CAD Technician	\$95/hr
Administrative	\$75/hr

Geotechnical – Terracon

Principal Engineer	\$195/hr
Senior Engineer	\$175/hr
Project Engineer	\$150/hr
Staff Engineer	\$110/hr
CADD Technician	\$75/hr
Administrative Assistant	\$65/hr

Mechanical Electrical – Ingenuity

Principal-in-Charge	\$275/hr
Senior Project Manager/Engineer	\$195/hr
Senior MEP Designer	\$150/hr
CAD Technician	\$125/hr
Administrative	\$110/hr

Structural Engineering – MK

Structural Engineer	\$200/hr
CAD Technician	\$120/hr
Administrative	\$100/hr

Cost Estimating – CMI

Cost Estimator	\$114.40/hr
Administrative	\$83.60/hr

Survey, Site Civil – Atwell

Senior Project Manager	\$210/hr
Senior Engineer	\$185/hr
Engineer/Designer	\$165/hr
Technician	\$110/hr
Field Survey	\$170/hr
Project Manager/Senior Surveyor	\$185/hr
Surveyor	\$125/hr
Clerical	\$ 80/hr
CADD Draftsman	\$100/hr

Landscape Architecture – NAK

NAK Director	\$270/hr
Senior Project Manager	\$180/hr
Senior Project Coordinator	\$100/hr
Project Coordinator	\$ 85/hr
Field Surveyor	\$170/hr