

PROFESSIONAL HYDROGEOLOGICAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between The City of Daytona Beach, Florida (the "CITY"), and Connect Consulting, Inc. ("CONTRACTOR").

WHEREAS, CONTRACTOR is currently under written contract with Seminole County, to Professional Hydrogeological Services, under terms and conditions specified therein; and

WHEREAS, the CITY is in need of Professional Hydrogeological Services; and

WHEREAS, the CITY desires to have CONTRACTOR perform such services, subject to the terms and conditions of the above-referenced Contract with the specific exceptions noted herein, in general accordance with CONTRACTOR's contract with Seminole County referenced above; and

WHEREAS, CONTRACTOR is willing to perform the Professional Hydrogeological Services under such terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

1. Scope of Service. CONTRACTOR will Professional Hydrogeological Services. The work is more fully described in the written contract between CONTRACTOR and Seminole County (hereinafter the Professional Hydrogeological Services "Contract"), attached hereto and incorporated herein by reference as Exhibit A.

2. Contract Term/Renewal. The Initial Term of this Agreement will commence on the Effective Date (which is the date last signed below) and **end on 4/26/2020**. The CITY will have the option to renew this Agreement for up to **1 year** by giving CONTRACTOR written notice. Such notice must be provided at least 60 days prior to the end of the Initial Term unless waived by CONTRACTOR.

3. Payment and Billing. Payment will be based on the unit prices set forth in the Professional Hydrogeological Services Contract.

4. Incorporation of Contract; Exceptions. All other terms and conditions of the Professional Hydrogeological Services Contract will apply to this Agreement, except to where such terms and conditions conflict with the provisions herein. These exceptions to the terms and conditions include the following:

(a) All references to "Supplier," "Vendor," "Contractor," and similar terms in the Seminole County Contract will be deemed to refer to CONTRACTOR.

(b) All references to "Seminole County" and similar terms will be deemed to refer to Volusia County, Florida.

(c) All references within the Professional Hydrogeological Services Contract to specific names or titles of officers/departments/divisions, or to specific locations (such as for delivery of goods, receipt of CONTRACTOR invoicing, etc.), not specifically corrected in this Agreement, will be deemed to refer to the equivalent CITY officers/departments/divisions, and CITY locations, as hereafter designated by the CITY's Designated Representative.

(d) The person identified below for receipt of notices to the CITY or his or her designee will be the CITY's Designated Representative in all matters arising under this Agreement, except as specifically provided otherwise in this Agreement.

(e) CITY shall provide CONTRACTOR a copy of CITY's sales tax exempt certificate.

5. Standard of Performance. In addition to any standards of performance or warranties set forth in the Seminole County Contract, CONTRACTOR affirms that CONTRACTOR's services will at a minimum meet the level care and skill ordinarily used by members of CONTRACTOR's profession performing the type of services provided herein within the State of Florida.

6. Public Records.

(a) To the extent applicable, CONTRACTOR will comply with the requirements of Florida's Public Records Law, ch. 119, Florida Statutes, which include the following:

(1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

(2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Agreement, or, if this is a Contract for a specified Term, through the expiration of the Term; and following such completion or expiration, as applicable, if CONTRACTOR fails to transfer such records to the CITY.

(4) Upon completion of the work, or, if this is a Contract for a specified Term, upon expiration of the Term, keep and maintain public records required by the CITY to perform the service. CONTRACTOR will meet all applicable requirements for retaining public records. All records stored electronically must be provide to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS

AGREEMENT, CONTRACTOR MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:

(Phone) 386 671-8023
(Email) clerk@codb.us
(Address) 301 S. Ridgewood Avenue
Daytona Beach, FL 32114

(b) Nothing herein will be deemed to waive CONTRACTOR's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

7. **Notices.** All notices, requests, demands and other communications required under this Agreement will be in writing and deemed delivered if delivered in person, by telefax, by overnight courier or by certified or registered mail:

If to City, to: Shannon Ponitz
Utilities Director
Daytona Beach Utilities Department
125 Basin Street, Suite 204
Daytona Beach, FL 32114
Fax: (386) 671-8805

If to CONTRACTOR, to: David S. Robertson, President
Name and Title
261 N. Lakeview Drive
Street Address, no PO Box
Lake Helen, Florida 32744
City, State, Zip
Fax: 386-473-7766 (Phone/Fax)

8. Termination.

(a) ~~The CITY may by written notice to CONTRACTOR terminate this Agreement, in whole or in part, at any time, either for the CITY's convenience or because of the failure of the CONTRACTOR to fulfill its contractual obligations.~~

(1) Before terminating for convenience, CITY must provide CONSULANT at least 30 day's advance notice of termination. This Agreement will terminate automatically and without need for further notice upon the expiration of the notice period.

(2) Before terminating due to CONTRACTOR's material breach of its contractual obligations, CITY must provide CONTRACTOR prior written notice, specifying the breach and demanding CONTRACTOR remedy the breach within 10 days of the notice, or within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within

10 days of notice. This Agreement will terminate automatically and without need for further notice if CONTRACTOR fails to remedy the material breach within the period described in the CITY's notice of breach.

In either instance described above, upon termination CONTRACTOR will immediately discontinue all services affected, unless the notice directs otherwise, and deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and any and all such other information and services of whatever type or nature as may have been accumulated by CONTRACTOR in performing this Agreement, whether completed or in process.

(b) If the termination is for convenience, CONTRACTOR will be paid compensation for authorized services performed to the date of termination. If termination is due to CONTRACTOR's material breach, the CITY reserves all rights and remedies it may have under law due to such breach. Among other things, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case, the CONTRACTOR will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby.

(c) If after notice of termination for the CONTRACTOR's failure to fulfill contractual obligations it is judicially determined by the CITY or by a court of law that the CONTRACTOR had not so failed, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONTRACTOR will be made as provided in subsection (b) of this Section for a termination for convenience.

(d) The rights and remedies of CITY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

9. Suspension of Services. If the notice of material breach issued by the CITY pursuant to the preceding Section so directs, CONTRACTOR will suspend services immediately upon receipt thereof, other than the work required to remedy the material breach.

10. Indemnification. CONTRACTOR will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONTRACTOR, or CONTRACTOR's officers, employees, or agents, including subcontractors and other persons employed or use by CONTRACTOR in the performance of this Agreement. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this agreement or otherwise.

11. Insurance. CONTRACTOR will provide and maintain at CONTRACTOR's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. Insurance shall be on occurrence basis unless otherwise specified under this section. All such insurance will be primary and non-contributory with the CITY's own insurance. In the event any request for the performance of services presents exposures to the CITY not covered by the requirements set forth below, the CITY reserves the right to add insurance requirements that will cover such an exposure. The City shall be exempt from, and in no way liable for, any sums of money that may represent a

deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor or sub-contractor providing such insurance.

(a) *Coverage and Amounts.*

(1) **Workers Compensation Insurance** as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

(2) **Liability Insurance**, including (i) **Commercial General Liability** coverage for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONTRACTOR and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) Automobile Liability Insurance, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CONTRACTOR in the performance of this Agreement.

The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. CONTRACTOR'S Commercial General Liability insurance policy shall provide coverage to CONTRACTOR, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of CITY in Contractor's Care, Custody or Control or Property of CITY on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

(3) **Contractors Pollution Liability** in the amount of \$1,000,000 Per Loss, \$2,000,000 Annual Aggregate. Such coverage will include bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arise from the

operations of the contractor. The City of Daytona Beach shall be named as additional insured.

(4) **Professional Liability** Insurance, insuring CONTRACTOR and other interests, including, but not limited to, any associated or subsidiary companies involved in the work, for errors or omissions in the performance of professional services to be rendered pursuant to this Contract. The limit of liability will be no less than \$1,000,000.

(Professional Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date equal to at least the first date of this agreement and with a three year reporting tail beyond the annual expiration date of the policy).

Unless specifically waived hereafter in writing by the Risk Manager, Contractor agrees that the insurer shall waive its rights of subrogation, if any, against the City on each of the foregoing types of required insurance coverage.

(b) *Proof of Insurance.* CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Agreement. CONTRACTOR will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONTRACTOR will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, and the expiration dates.

If requested by the CITY, CONTRACTOR will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.

(c) *Cancellation; Replacement Required.* CONTRACTOR will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the CITY. If a required policy is canceled without CONTRACTOR's prior knowledge CONTRACTOR will immediately notify the CITY immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The CITY expressly reserves the right or replace the canceled policy at CONTRACTOR's expense if CONTRACTOR fails to do so.

(d) *Termination of Insurance.* CONTRACTOR may not cancel the insurance required by this Agreement until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Management Division of the CITY that CONTRACTOR may cancel the insurance required by this Agreement and the date upon which the insurance may be canceled. The Risk Management Division of the CITY will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

(e) *Liabilities Unaffected.* CONTRACTOR's liabilities under this Agreement will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONTRACTOR's liabilities under this Agreement will not be limited to the extent of by the existence of any exclusions or limitations in insurance coverages, or by CONTRACTOR's failure to obtain insurance coverage.

CONTRACTOR will not be relieved from responsibility to provide required insurance by any failure of the CITY to demand such coverage, or by CITY's approval of a policy submitted by CONTRACTOR that does not meet the requirements of this Agreement.

12. Disputes. If a dispute exists concerning this Agreement, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

(a) *Negotiations.* A Party will request in writing that a meeting be held between representatives of each Party within 14 Calendar Days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

(b) *Non-Binding Mediation.* Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described above proves unsuccessful or the Parties mutually waive the procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then the Parties are released to pursue any judicial remedies available to them.

13. Additional Provisions. The following additional provisions apply:

(a) CONTRACTOR will comply with the terms and conditions of any and all federal, state and local permits, which may be required for the work to be performed. The CITY will be responsible for obtaining all other permits at the CITY's cost.

(b) CONTRACTOR will not assign, transfer, delegate or in any other manner dispose of its rights, privileges or obligations under this Agreement, without the written consent of the CITY.

(c) This Agreement will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Agreement and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Agreement. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Agreement; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

(d) The exclusive venue for any litigation arising out of this Agreement will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

(e) JURY TRIAL WAIVED. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

(f) Except where specifically provided herein, in case of litigation between the Parties concerning this Agreement, each party will bear all of its litigation costs, including attorney's fees.

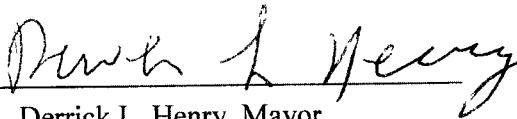
(g) A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Agreement imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

(h) This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements, or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

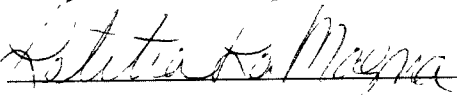
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as below.

THE CITY

CONTRACTOR

By: 
Derrick L. Henry, Mayor

By: 

Attest: 
Letitia LaMagna, City Clerk

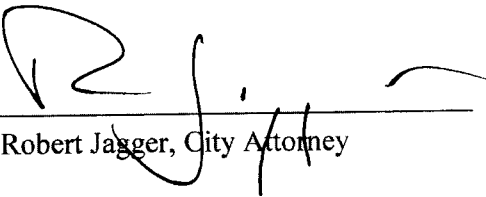
Printed Name: Gary E. Eichler

Title: Vice President

Date: 12-19-19

Date: November 14, 2019

Approved as to legal form:

By: 
Robert Jagger, City Attorney